



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

##### *General*

#### **195 Remit to High Court for sentence.**

- (1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—
  - (a) endorse upon the record copy of the indictment a certificate of the plea or the verdict, as the case may be;
  - (b) by interlocutor written on the record copy remit the convicted person to the High Court for sentence; and
  - (c) append to the interlocutor a note of his reasons for the remit,and a remit under this section shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the person is sentenced.
- (2) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the accused to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.
- (3) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

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- (4) Subject to subsection (3) above, the note of reasons shall be available only to the High Court and the parties.

### 196 Sentence following guilty plea.

[<sup>F1</sup>(1)] In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.

[<sup>F2</sup>(2) Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.]

#### Textual Amendments

- F1** S. 196 renumbered as s. 196(1) (20.10.1997) by 1997 c. 48, s. 2(2)(a); S.I. 1997/2323, art. 3, Sch. 1  
**F2** S. 196(2) inserted (20.10.1997) by 1997 c. 48, s. 2(2)(b); S.I. 1997/2323, art. 3, Sch. 1

### 197 Sentencing guidelines.

Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under section 118(7) or section 189(7) of this Act.

### 198 Form of sentence.

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form prescribed by Act of Adjournal.
- (2) In recording a sentence of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the accused, without specifying the prison in which the sentence is to be carried out; and an entry of sentence, signed by the clerk of court, shall be full warrant and authority for any subsequent execution of the sentence and for the clerk to issue extracts for the purposes of execution or otherwise.
- (3) In extracting a sentence of imprisonment, the extract may be in the form set out in an Act of Adjournal or as nearly as may be in such form.

### 199 Power to mitigate penalties.

- (1) Subject to subsection (3) below, where a person is convicted of the contravention of an enactment and the penalty which may be imposed involves—
  - (a) imprisonment;
  - (b) the imposition of a fine;
  - (c) the finding of caution for good behaviour or otherwise whether or not imposed in addition to imprisonment or a fine,

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subsection (2) below shall apply.

- (2) Where this subsection applies, the court, in addition to any other power conferred by statute, shall have power—
- (a) to reduce the period of imprisonment;
  - (b) to substitute for imprisonment a fine (either with or without the finding of caution for good behaviour);
  - (c) to substitute for imprisonment or a fine the finding of caution;
  - (d) to reduce the amount of the fine;
  - (e) to dispense with the finding of caution.
- (3) Subsection (2) above shall not apply—
- (a) in relation to an enactment which carries into effect a treaty, convention, or agreement with a foreign state which stipulates for a fine of a minimum amount; or
  - (b) to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces. <sup>[F3]</sup>; or
  - (c) to any proceedings in which the court on conviction is under a duty to impose a sentence under section 205A(2) or 205B(2) of this Act.]
- (4) Where, in summary proceedings, a fine is imposed in substitution for imprisonment, the fine—
- (a) in the case of an offence which is triable either summarily or on indictment, shall not exceed the prescribed sum; and
  - (b) in the case of an offence triable only summarily, shall not exceed level 4 on the standard scale.
- (5) Where the finding of caution is imposed under this section—
- (a) in respect of an offence which is triable only summarily, the amount shall not exceed level 4 on the standard scale and the period shall not exceed that which the court may impose under this Act; and
  - (b) in any other case, the amount shall not exceed the prescribed sum and the period shall not exceed 12 months.

#### Textual Amendments

**F3** S. 199(3)(c) and the preceding word "; or" inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(23)**; S.I. 1997/2323, art. 3, **Sch. 1**

#### Modifications etc. (not altering text)

**C1** S. 199(2)(b) excluded (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 48(2), 62(2); S.S.I. 2010/357, art. 2

### *Pre-sentencing procedure*

#### **200 Remand for inquiry into physical or mental condition.**

- (1) Without prejudice to any powers exercisable by a court under section 201 of this Act, where—

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- (a) the court finds that an accused has committed an offence punishable with imprisonment; and
  - (b) it appears to the court that before the method of dealing with him is determined an inquiry ought to be made into his physical or mental condition,
- subsection (2) below shall apply.
- (2) Where this subsection applies the court shall—
- (a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;
  - (b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—
    - (i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and
    - (ii) that a hospital is available for his admission and suitable for his detention,
 make an order committing him to that hospital,
- for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (3) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (2) above, the court may—
- (a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and
  - (b) in any other case, remand the person in custody or on bail in accordance with subsection (2) above.
- (4) An order under subsection (3)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.
- (5) Where, before the expiry of the period specified in an order for committal to hospital under subsection (2)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (2)(a) above or any other provision of this Part of this Act, as the court considers appropriate.
- (6) Where an accused is remanded on bail under this section, it shall be a condition of the order granting bail that he shall—
- (a) undergo a medical examination by a duly qualified registered medical practitioner or, where the inquiry is into his mental condition, and the order granting bail so specifies, two such practitioners; and
  - (b) for the purpose of such examination, attend at an institution or place, or on any such practitioner specified in the order granting bail and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified,
- and, if arrangements have been made for his reception, it may be a condition of the order granting bail that the person shall, for the purpose of the examination, reside in

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an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

(7) On exercising the powers conferred by this section to remand in custody or on bail the court shall—

- (a) where the person is remanded in custody, send to the institution or place in which he is detained; and
- (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which it appears to the court that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

(8) On making an order of committal to hospital under subsection (2)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.

(9) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed and a person committed to hospital under this section may appeal against the order of committal within 24 hours of his remand or, as the case may be, committal, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

- (a) review the order and grant bail on such conditions as it thinks fit; or
- (b) confirm the order; or
- (c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.

(10) The court may, on cause shown, vary an order for committal to hospital under subsection (2)(b) above by substituting another hospital for the hospital specified in the order.

(11) Subsection (2)(b) above shall apply to the variation of an order under subsection (10) above as it applies to the making of an order for committal to hospital.

## **201 Power of court to adjourn case before sentence.**

(1) Where an accused has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, subject to subsection (3) below, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where the court adjourns a case solely for the purpose mentioned in subsection (1) above, it shall remand the accused in custody or on bail or ordain him to appear at the adjourned diet.

(3) A court shall not adjourn the hearing of a case as mentioned in subsection (1) above for any single period [<sup>F4</sup>exceeding four weeks or, on cause shown, eight weeks.]

(4) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal

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presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—

- (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet; or
- (b) confirm the order.

#### Textual Amendments

**F4** Words in s. 201(3) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 67, 89**; [S.S.I. 2003/288](#), **art. 2**, Sch.

### 202 Deferred sentence.

- (1) It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.
- (2) If it appears to the court which deferred sentence on an accused under subsection (1) above that he has been convicted during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the court which deferred sentence may—
  - (a) issue a warrant for the arrest of the accused; or
  - (b) instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation, and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.
- (3) Where a court which has deferred sentence on an accused under subsection (1) above convicts him of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.

### 203 Reports.

- (1) Where a person specified in section 27(1)(b)(i) to (vi) of the <sup>M1</sup>Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—
  - (a) the circumstances of the offence; and
  - (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.
- (2) In subsection (1) above, “the court” does not include a district court.
- (3) Where, in any case, a report by an officer of a local authority is made to the court with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor.

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### Marginal Citations

M1 1968 c.49.

VALID FROM 28/03/2011

## [<sup>F5</sup>203A Reports about organisations

- (1) This section applies where an organisation is convicted of an offence.
- (2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.
- (3) The report is to be prepared by a person appointed by the court.
- (4) The person appointed to prepare the report is referred to in this section as the “reporter”.
- (5) The court may issue directions to the reporter about—
  - (a) the information to be contained in the report,
  - (b) the particular matters to be covered by the report,
  - (c) the time by which the report is to be submitted to the court.
- (6) The court may order the organisation to give the reporter and any person acting on the reporter's behalf—
  - (a) access at all reasonable times to the organisation's books, documents and other records,
  - (b) such information or explanation as the reporter thinks necessary.
- (7) The reporter's costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.
- (8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.
- (9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
  - (a) the organisation,
  - (b) the organisation's solicitor (if any), and
  - (c) the prosecutor.
- (10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.
- (11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—
  - (a) the report, and
  - (b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.
- (12) Where the court—
  - (a) makes an order under subsection (7), and
  - (b) imposes a fine on the organisation,

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any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).

- (13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).]

#### Textual Amendments

- F5** S. 203A inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 22**, 206(1)

*Imprisonment, etc.*

### 204 Restrictions on passing sentence of imprisonment or detention.

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—
- (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
  - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.

- (2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; <sup>F6</sup> . . .

[<sup>F7</sup>(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court shall take into account—

- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
- (b) any information before it concerning his character and mental and physical condition;
- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.]

- (3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.

- (4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—

- (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the <sup>M2</sup>Powers of Criminal Courts



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Act 1973 or under section 19 of the <sup>M3</sup>Treatment of Offenders Act (Northern Ireland) 1968;

- (b) construe detention as meaning —
- (i) in relation to Scotland, detention in a young offenders institution or detention centre;
  - (ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and
  - (iii) in relation to Northern Ireland, detention in a young offenders centre.

(5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.

(6) In this section—

“legal aid” means legal aid for the purposes of any part of the proceedings before the court;

“legally represented” means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

#### Textual Amendments

**F6** Words in s. 204(2) repealed (1.8.1997) by 1997 c. 48, s. 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5) and expressed to be repealed (1.1.1998) by 1997 c. 48, s. 6(3)(a); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

**F7** S. 204(2A) inserted (1.1.1998) by 1997 c. 48, s. 6(3)(b); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

#### Marginal Citations

**M2** 1973 c.62.

**M3** 1968 c.29. (N.I.)

### [<sup>F8</sup>204A Restriction on consecutive sentences for released prisoners.

A court sentencing a person to imprisonment or other detention shall not order or direct that the term of imprisonment or detention shall commence on the expiration of any other such sentence from which he has been released at any time under the existing or new provisions within the meaning of Schedule 6 to the <sup>M4</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993.]

#### Textual Amendments

**F8** S. 204A inserted (30.9.1998) by 1998 c. 37, s. 112; S.I. 1998/2327, art. 2(1)(x)

#### Marginal Citations

**M4** 1993 c.9.

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VALID FROM 01/12/2003

**[<sup>F9</sup>204B Consecutive sentences: life prisoners etc.**

- (1) This section applies in respect of sentencing for offences committed after the coming into force of this section.
- (2) Where, in solemn proceedings, the court sentences a person to imprisonment or other detention, the court may—
  - (a) if the person is serving or is liable to serve the punishment part of a previous sentence, frame the sentence to take effect on the day after that part of that sentence is or would be due to expire; or
  - (b) if the person is serving or is liable to serve the punishment parts of two or more previous sentences, frame the sentence to take effect on the day after the later or (as the case may be) latest expiring of those parts is or would be due to expire.
- (3) Where, in such proceedings, it falls to the court to sentence a person who is subject to a previous sentence in respect of which a punishment part requires to be (but has not been) specified, the court shall not sentence the person until such time as the part is either specified or no longer requires to be specified.
- (4) Where the court sentences a person to a sentence of imprisonment or other detention for life, for an indeterminate period or without limit of time, the court may, if the person is serving or is liable to serve for any offence—
  - (a) a previous sentence of imprisonment or other detention the term of which is not treated as part of a single term under section 27(5) of the 1993 Act; or
  - (b) two or more previous sentences of imprisonment or other detention the terms of which are treated as a single term under that section of that Act,
 frame the sentence to take effect on the day after the person would (but for the sentence so framed and disregarding any subsequent sentence) be entitled to be released under the provisions referred to in section 204A of this Act as respects the sentence or sentences.
- (5) Subsection (4)(a) above shall not apply where the sentence is a sentence from which he has been released at any time under the provisions referred to in section 204A of this Act.
- (6) In this section, any reference to a punishment part of a sentence shall be construed by reference to—
  - (a) the punishment part of the sentence as is specified in an order mentioned in section 2(2) of the 1993 Act; or
  - (b) any part of the sentence which has effect, by virtue of section 10 of the 1993 Act or the schedule to the Convention Rights (Compliance)(Scotland) Act 2001 (asp 7), as if it were the punishment part so specified,
 and “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).
- (7) This section is without prejudice to any other power under any enactment or rule of law as respects sentencing.]

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**Textual Amendments**

**F9** S. 204B inserted (1.12.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 26\(1\), 89; S.S.I. 2003/475, art. 2, Sch.](#)

**205 Punishment for murder.**

- (1) Subject to subsections (2) and (3) [<sup>F10</sup>and section 205D]below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.

- <sup>F11</sup>(4) .....
- <sup>F11</sup>(5) .....
- <sup>F11</sup>(6) .....

**Textual Amendments**

**F10** Words in s. 205(1) inserted (17.12.2001) by [2001 asp 7, s. 2\(1\)\(a\); S.S.I. 2001/456, art. 2](#)  
**F11** S. 205(4)-(6) repealed (17.12.2001) by [2001 asp 7, s. 2\(1\)\(b\); S.S.I. 2001/456 art. 2](#)

**[<sup>F12</sup>205B Minimum sentence for third conviction of certain offences relating to drug trafficking.**

- (1) This section applies where—
  - (a) a person is convicted on indictment in the High Court of a class A drug trafficking offence committed after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
  - (b) at the time when that offence was committed, he had attained the age of at least 18 years and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences, irrespective of—
    - (i) whether either of those offences was committed before or after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
    - (ii) the court in which any such conviction was obtained; and
    - (iii) his age at the time of the commission of either of those offences; and
  - (c) one of the offences mentioned in paragraph (b) above was committed after he had been convicted of the other.
- (2) Subject to subsection (3) below, where this section applies the court shall sentence the person—

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- (a) where he has attained the age of 21 years, to a term of imprisonment of at least seven years; and
  - (b) where he has attained the age of 18 years but is under the age of 21 years, to detention in a young offenders institution for a period of at least seven years.
- (3) The court shall not impose the sentence otherwise required by subsection (2) above where it is of the opinion that there are specific circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make that sentence unjust.
- (4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a class A drug trafficking offence shall not be regarded as a sentence fixed by law for that offence.
- (5) In this section “class A drug trafficking offence” means a drug trafficking offence committed in respect of a class A drug; and for this purpose—
- “class A drug” has the same meaning as in the <sup>M5</sup>Misuse of Drugs Act 1971;
  - [<sup>F13</sup>“drug trafficking offence” means an offence specified in paragraph 2 or (so far as it relates to that paragraph) paragraph 10 of Schedule 4 to the Proceeds of Crime Act 2002;]

#### Textual Amendments

**F12** S. 205B inserted (20.10.1997) by 1997 c. 48, s. 2(1); S.I. 1997/2323, art. 3, Sch. 1

**F13** In s. 205B(5) definition of “drug trafficking offence” substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458, Sch. 11 para. 29(3); S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

#### Marginal Citations

**M5** 1971 c.38.

#### [<sup>F14</sup>205C Meaning of “conviction” for purposes of sections 205A and 205B.

- (1) For the purposes of paragraph (b) of subsection (1) of each of sections 205A and 205B of this Act “conviction” includes—
- (a) a finding of guilt in respect of which the offender was admonished under section 181 of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1975 (admonition); and
  - (b) a conviction for which an order is made placing the offender on probation, and related expressions shall be construed accordingly.
- (2) This subsection applies where a person has at any time been convicted of an offence under—
- (a) section 70 of the <sup>M7</sup>Army Act 1955;
  - (b) section 70 of the <sup>M8</sup>Air Force Act 1955; or
  - (c) section 42 of the <sup>M9</sup>Naval Discipline Act 1957.
- (3) Where subsection (2) above applies and the corresponding civil offence (within the meaning of the Act under which the offence was committed) was—
- (a) a relevant offence within the meaning of section 205A of this Act; or
  - (b) a Class A drug trafficking offence within the meaning of section 205B of this Act,

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that section shall have effect as if he had been convicted in England and Wales of the corresponding civil offence.]

#### Textual Amendments

**F14** S. 205C inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 3, 65(2); S.I. 1997/2323, art. 3, Sch. 1

#### Marginal Citations

**M6** 1975 c. 21.  
**M7** 1955 c.18.  
**M8** 1955 c.19.  
**M9** 1957 c. 53.

### [<sup>F15</sup>205D Only one sentence of imprisonment for life to be imposed in any proceedings

Where a person is convicted on the same indictment of more than one offence for which the court must impose or would, apart from this section, have imposed a sentence of imprisonment for life, only one such sentence shall be imposed in respect of those offences.]

#### Textual Amendments

**F15** S. 205D inserted (8.10.2001) by 2001 asp 7, s. 2(2); S.S.I. 2001/274, art. 3(3)

### 206 Minimum periods of imprisonment.

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as mentioned in subsection (4) below is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the <sup>M10</sup>Prisons (Scotland) Act 1989.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.

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- (6) In this section the expression “police authority” has the same meaning as in the <sup>M11</sup>Police (Scotland) Act 1967.

#### Marginal Citations

**M10** 1989 c.45.

**M11** 1967 c.77.

## 207 Detention of young offenders.

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to [<sup>F16</sup>sections 205(2) and (3), 205A(2)(b) and 205B(2)(b)] of this Act and to subsections (3) and (4) below, a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and a period of detention imposed under this section on any person shall not [<sup>F17</sup>be less than the minimum nor more than]the maximum period of imprisonment which might otherwise have been imposed.
- (3) The court shall not under subsection (2) above impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- (4) To enable the court to form an opinion under subsection (3) above, it shall obtain from an officer of a local authority or otherwise such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.
- [<sup>F18</sup>(4A) In forming an opinion under subsection (3) above the court shall take into account its power to make a hospital direction in addition to imposing a period of detention.]
- (5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.

#### Textual Amendments

**F16** Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(25)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

**F17** Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(25)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

**F18** S. 207(4A) inserted (1.1.1998) by 1997 c. 48, s. 6(4); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

## 208 Detention of children convicted on indictment.

Subject to section 205 of this Act, where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

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## 209 Supervised release orders.

- (1) Where a person is convicted [<sup>F19</sup>on indictment]of an offence [<sup>F19</sup>, other than a sexual offence within the meaning of section 210A of this Act,]and is sentenced to imprisonment for a term of <sup>F20</sup>. . . less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (3) below.
- (2) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (3) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
  - (a) be under the supervision either of a relevant officer of a local authority or of [<sup>F21</sup>an officer of a local probation board] appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the <sup>M12</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993);
  - (b) comply with;
    - (i) such requirements as may be imposed by the court in the order; and
    - (ii) such requirements as that officer may reasonably specify,for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced); and
  - (c) comply with the standard requirements imposed by virtue of subsection (4) (a)(i) below.
- (4) A supervised release order—
  - (a) shall—
    - (i) without prejudice to subsection (3)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and
    - (ii) be as nearly as possible in such form,as may be prescribed by Act of Adjournal;
  - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
  - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (5) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (6) The clerk of the court by which a supervised release order is made in respect of a person shall—
  - (a) forthwith send a copy of the order to the person and to the Secretary of State; and
  - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.



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(7) In this section—

“relevant officer” has the same meaning as in Part I of the <sup>M13</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;

“relevant period” means such period as may be specified in the supervised release order, being a period—

- (a) not exceeding twelve months after the date of the person’s release; and
- (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (3)(a) above for the purposes of the order, any relevant officer or, as the case may be, [<sup>F22</sup>officer of a local probation board] who is for the time being supervising for those purposes the person released.

[<sup>F23</sup>(7A) Where a person—

- (a) is serving a sentence of imprisonment and on his release from that sentence will be subject to a supervised release order; and
- (b) is sentenced to a further term of imprisonment, whether that term is to run consecutively or concurrently with the sentence mentioned in paragraph (a) above,

the relevant period for any supervised release order made in relation to him shall begin on the date when he is released from those terms of imprisonment; and where there is more than one such order he shall on his release be subject to whichever of them is for the longer or, as the case may be, the longest period.]

(8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

#### Extent Information

**E1** S. 209(3)and(7) extend to G.B., see s. 309(4)

#### Textual Amendments

**F19** Words in s. 209(1) inserted (30.9.1998) by 1998 c. 37, s. 86(2)(a)(b); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

**F20** Words in s. 209(1) repealed (30.9.1998) by 1998 c. 37, ss. 86(2)(c), 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(s)(aa)(3)(w) (subject to arts. 5-8)

**F21** Words in s. 209(3)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 para. 4(1)(a)(2); S.I. 2001/919, art. 2(f)(ii)

**F22** Words in s. 209(7) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 para. 121; S.I. 2001/919, art. 2(f)(ii)

**F23** S. 209(7A) inserted (1.4.1999) by 1997 c. 48, s. 62(1), Sch. 1 para. 21(26)S.I. 1999/652, art. 2, Sch. (subject to savings and transitional provisions in art. 3)

#### Marginal Citations

**M12** 1993 c.9.

**M13** 1993 c.9.



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## 210 Consideration of time spent in custody.

- (1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—
- (a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom [<sup>F24</sup>, or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act];
  - (b) specify the date of commencement of the sentence; and
  - (c) if the person—
    - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
    - (ii) is an extradited prisoner for the purposes of this section, [<sup>F25</sup>; or
    - (iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act,]
 

and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date.
- (2) A prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored to the state from which he was extradited or having had an opportunity of leaving the United Kingdom; and
  - (b) he was for any period in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements (as defined in section 3 of the <sup>M14</sup>Extradition Act 1989);
  - (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
  - (c) under that Act as extended to a colony or under any corresponding law of a colony;
  - (d) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the <sup>M15</sup>Extradition Act 1870 is in force; or
  - (e) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the <sup>M16</sup>Backing of Warrants (Republic of Ireland) Act 1965.

### Textual Amendments

**F24** Words in s. 210(1) inserted (1.8.1997) by 1997 c. 48, s. 12(a); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F25** S. 210(1)(c)(iii) and the preceding word “;or” inserted (1.8.1997) by 1997 c. 48, s. 12(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

### Marginal Citations

**M14** 1989 c.33.

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**M15** 33 & 34 Vict. c.52.

**M16** 1965 c.45.

**[<sup>F26</sup>210A] Extended sentences for sex and violent offenders.**

- (1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it—
  - (a) intends, in relation to—
    - (i) a sexual offence, to pass a determinate sentence of imprisonment; or
    - (ii) a violent offence, to pass such a sentence for a term of four years or more; and
  - (b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender,
 pass an extended sentence on the offender.
- (2) An extended sentence is a sentence of imprisonment which is the aggregate of—
  - (a) the term of imprisonment (“the custodial term”) which the court would have passed on the offender otherwise than by virtue of this section; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.
- (3) The extension period shall not exceed, in the case of—
  - (a) a sexual offence, ten years; and
  - (b) a violent offence, [<sup>F27</sup>ten] years.
- (4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.
- (6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding three years.
- (7) The Secretary of State may by order—
  - (a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and
  - (b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.
- (8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.

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(10) For the purposes of this section—

“licence” and “relevant officer” have the same meaning as in Part I of the <sup>M17</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;

“sexual offence” means—

- (i) rape;
- (ii) clandestine injury to women;
- (iii) abduction of a woman or girl with intent to rape or ravish;
- (iv) assault with intent to rape or ravish;
- (v) indecent assault;
- (vi) lewd, indecent or libidinous behaviour or practices;
- (vii) shameless indecency;
- (viii) sodomy;
- (ix) an offence under section 170 of the <sup>M18</sup>Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the <sup>M19</sup>Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
- (x) an offence under section 52 of the <sup>M20</sup>Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
- (xi) an offence under section 52A of that Act (possession of indecent images of children);
- (xii) an offence under section 1 of the <sup>M21</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
- (xiii) an offence under section 2 of that Act (intercourse with a stepchild);
- (xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);
- (xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);
- (xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);
- (xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);
- (xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); <sup>F28</sup> . . .
- (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences); <sup>F29</sup> and
- (xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).]

“imprisonment” includes—

- (i) detention under section 207 of this Act; and
- (ii) detention under section 208 of this Act; and

“violent offence” means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.

(11) Any reference in subsection (10) above to a sexual offence includes—

- (a) a reference to any attempt, conspiracy or incitement to commit that offence; and

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- (b) except in the case of an offence in paragraphs (i) to (viii) of the definition of “sexual offence” in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence.]

#### Textual Amendments

- F26** S. 210A inserted (30.9.1998) by 1998 c. 37, s. 86(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F27** Word in s. 210A(3)(b) substituted (28.1.2003) by The Extended Sentences for Violent Offenders (Scotland) Order 2003 (S.S.I. 2003/48), art. 2 (with art. 1(2))
- F28** S. 210A: word “and” immediately preceding s. 210A(10) para. (xix) omitted (8.1.2001) by virtue of 2000 c. 44, s. 6(2); S.S.I. 2000/452, art. 2(f)
- F29** S. 210A(xx) and the preceding “and” inserted (8.1.2001) by 2000 c. 44, s. 6(2); S.S.I. 2000/452, art. 2(f)

#### Marginal Citations

- M17** 1993 c.9.
- M18** 1979 c.2.
- M19** 1876 c.36.
- M20** 1982 c.45.
- M21** 1995 c.39.

### [<sup>F30</sup> 210A] Extended sentences for certain other offenders

Where a person is convicted on indictment of abduction but the offence is other than is mentioned in paragraph (iii) of the definition of “sexual offence” in subsection (10) of section 210A of this Act, that section shall apply in relation to the person as it applies in relation to a person so convicted of a violent offence.]

#### Textual Amendments

- F30** S. 210AA inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 20, 89; S.S.I. 2003/288, art. 2, Sch.

VALID FROM 19/06/2006

### [<sup>F31</sup> Risk assessment

#### Textual Amendments

- F31** Ss. 210B-210H and cross-headings inserted (19.6.2006 for specified purposes) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1, 89 (as amended with regards to ss. 210B, 210D and 210G (27.9.2005) by S.S.I. 2005/465, art. 2, Sch. 1 para. 34(2)); S.S.I. 2006/332, art. 2

### 210B Risk assessment order

- (1) This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—
- (a) is (any or all)—

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- (i) a sexual offence (as defined in section 210A(10) of this Act);
    - (ii) a violent offence (as so defined);
    - (iii) an offence which endangers life; or
  - (b) is an offence the nature of which, or circumstances of the commission of which, are such that it appears to the court that the person has a propensity to commit any such offence as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above.
- (2) Where subsection (1) above applies, the court, at its own instance or (provided that the prosecutor has given the person notice of his intention in that regard) on the motion of the prosecutor, if it considers that the risk criteria may be met, shall make an order under this subsection (a “risk assessment order”) unless—
  - (a) the court makes an interim compulsion order by virtue of section 210D(1) of this Act in respect of the person; or
  - (b) the person is subject to an order for lifelong restriction previously imposed.
- (3) A risk assessment order is an order—
  - (a) for the convicted person to be taken to a place specified in the order, so that there may be prepared there—
    - (i) by a person accredited for the purposes of this section by the Risk Management Authority; and
    - (ii) in such manner as may be so accredited,a risk assessment report (that is to say, a report as to what risk his being at liberty presents to the safety of the public at large); and
  - (b) providing for him to be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such date as is fixed for sentence.
- (4) On making a risk assessment order, the court shall adjourn the case for a period not exceeding ninety days.
- (5) The court may on one occasion, on cause shown, extend the period mentioned in subsection (4) above by not more than ninety days; and it may exceptionally, where by reason of circumstances outwith the control of the person to whom it falls to prepare the risk assessment report (the “assessor”), or as the case may be of any person instructed under section 210C(5) of this Act to prepare such a report, the report in question has not been completed, grant such further extension as appears to it to be appropriate.
- (6) There shall be no appeal against a risk assessment order or against any refusal to make such an order.

### **210C Risk assessment report**

- (1) The assessor may, in preparing the risk assessment report, take into account not only any previous conviction of the convicted person but also any allegation that the person has engaged in criminal behaviour (whether or not that behaviour resulted in prosecution and acquittal).
- (2) Where the assessor, in preparing the risk assessment report, takes into account any allegation that the person has engaged in criminal behaviour, the report is to—
  - (a) list each such allegation;

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- (b) set out any additional evidence which supports the allegation; and
  - (c) explain the extent to which the allegation and evidence has influenced the opinion included in the report under subsection (3) below.
- (3) The assessor shall include in the risk assessment report his opinion as to whether the risk mentioned in section 210B(3)(a) of this Act is, having regard to such standards and guidelines as are issued by the Risk Management Authority in that regard, high, medium or low.
- (4) The assessor shall submit the risk assessment report to the High Court by sending it, together with such documents as are available to the assessor and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of the report and of those documents to the prosecutor and to the convicted person.
- (5) The convicted person may, during the period of his detention at the place specified in the risk assessment order, himself instruct the preparation (by a person other than the assessor) of a risk assessment report; and if such a report is so prepared then the person who prepares it shall submit it to the court by sending it, together with such documents as are available to him (after any requirement under subsection (4) above is met) and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of it and of those documents to the prosecutor.
- (6) When the court receives the risk assessment report submitted by the assessor a diet shall be fixed for the convicted person to be brought before it for sentence.
- (7) If, within such period after receiving a copy of that report as may be prescribed by Act of Adjournal, the convicted person intimates, in such form, or as nearly as may be in such form, as may be so prescribed—
- (a) that he objects to the content or findings of that report; and
  - (b) what the grounds of his objection are,
- the prosecutor and he shall be entitled to produce and examine witnesses with regard to—
- (i) that content or those findings; and
  - (ii) the content or findings of any risk assessment report instructed by the person and duly submitted under subsection (5) above.

#### **210D Interim hospital order and assessment of risk**

- (1) Where subsection (1) of section 210B of this Act applies, the High Court, if—
- (a) it may make an interim compulsion order in respect of the person under section 53 of this Act; and
  - (b) it considers that the risk criteria may be met,
- shall make such an order unless the person is subject to an order for lifelong restriction previously imposed.
- (2) Where an interim compulsion order is made by virtue of subsection (1) above, a report as to the risk the convicted person's being at liberty presents to the safety of the public at large shall be prepared by a person accredited for the purposes of this section by the Risk Management Authority and in such manner as may be so accredited.
- (3) Section 210C(1) to (4) and (7)(except paragraph (ii)) of this Act shall apply in respect of any such report as it does in respect of a risk assessment report.

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## 210E The risk criteria

For the purposes of sections 195(1), 210B(2), 210D(1) and 210F(1) and (3) of this Act, the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large.

VALID FROM 20/06/2006

### <sup>f32</sup> Application of certain sections of this Act to proceedings under section 210C(7)

- (1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the “applied sections”) apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the “trial” and to the “trial diet” being construed accordingly.
- (2) But for the purposes of this section the references—
  - (a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and
  - (b) in section 288E(2)(b) to the date of commencement of the proceedings,
 are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the “original proceedings”).
- (3) And for the purposes of this section any reference in the applied sections to—
  - (a) an “accused” (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;
  - (b) an “alleged” offence is to be construed as a reference to any or all of the following—
    - (i) the offence in respect of which sentence falls to be imposed;
    - (ii) any other offence of which the convicted person has been convicted;
    - (iii) any alleged criminal behaviour of the convicted person; and
  - (c) a “complainer” is to be construed as a reference to any or all of the following—
    - (i) the person who was the complainer in the original proceedings;
    - (ii) in the case of any such offence as is mentioned in paragraph (b)(ii) above, the person who was the complainer in the proceedings relating to that offence;
    - (iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.
- (4) Where—



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- (a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and
- (b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person's evidence at that trial,

that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person's evidence at or for the purposes of the examination.

- (5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.]

#### Textual Amendments

**F32** S. 210EA inserted (20.6.2006 for specified purposes) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), **ss. 19, 24**; [S.S.I. 2006/331](#), **art. 3(1)** (subject to art. 3(2))

VALID FROM 19/06/2006

### *Order for lifelong restriction etc.*

#### **210F Order for lifelong restriction**

- (1) The High Court, at its own instance or on the motion of the prosecutor, if it is satisfied, having regard to—
- (a) a risk assessment report submitted under section 210C(4) or (5) of this Act;
  - (b) any report submitted by virtue of section 210D of this Act;
  - (c) any evidence given under section 210C(7) of this Act; and
  - (d) any other information before it,
- that, on a balance of probabilities, the risk criteria are met, shall make an order for lifelong restriction in respect of the convicted person.
- (2) An order for lifelong restriction constitutes a sentence of imprisonment, or as the case may be detention, for an indeterminate period.
- (3) The prosecutor may, on the grounds that on a balance of probabilities the risk criteria are met, appeal against any refusal of the court to make an order for lifelong restriction.

#### **210G Disposal of case where certain orders not made**

- (1) Where, in respect of a convicted person—
- (a) a risk assessment order is not made under section 210B(2) of this Act, or (as the case may be) an interim compulsion order is not made by virtue of section 210D(1) of this Act, because the court does not consider that the risk criteria may be met; or



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(b) the court considers that the risk criteria may be met but a risk assessment order, or (as the case may be) an interim compulsion order, is not so made because the person is subject to an order for lifelong restriction previously imposed,

the court shall dispose of the case as it considers appropriate.

(2) Where, in respect of a convicted person, an order for lifelong restriction is not made under section 210F of this Act because the court is not satisfied (in accordance with subsection (1) of that section) that the risk criteria are met, the court, in disposing of the case, shall not impose on the person a sentence of imprisonment for life, detention for life or detention without limit of time.

VALID FROM 19/06/2006

### *Report of judge*

#### **210H Report of judge**

- (1) This subsection applies where a person falls to be sentenced—
- (a) in the High Court for an offence (other than murder) mentioned in section 210B(1) of this Act; or
  - (b) in the sheriff court for such an offence prosecuted on indictment.
- (2) Where subsection (1) above applies, the court shall, as soon as reasonably practicable, prepare a report in writing, in such form as may be prescribed by Act of Adjournal—
- (a) as to the circumstances of the case; and
  - (b) containing such other information as it considers appropriate,
- but no such report shall be prepared if a report is required to be prepared under section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7).]

### *Fines*

#### **211 Fines.**

- (1) Where an accused who is convicted on indictment of any offence (whether triable only on indictment or triable either on indictment or summarily other than by virtue of section 292(6) of this Act) would apart from this subsection be liable to a fine of or not exceeding a specified amount, he shall by virtue of this subsection be liable to a fine of any amount.
- (2) Where any Act confers a power by subordinate instrument to make a person liable on conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be imposed in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.

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- (3) Any sentence or decree for any fine or expenses pronounced by a sheriff court or district court may be enforced against the person or effects of any party against whom the sentence or decree was awarded—
  - (a) in the district where the sentence or decree was pronounced; or
  - (b) in any other such district.
- (4) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—
  - (a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides; and
  - (b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.
- (5) Any fine imposed in the High Court on the accused, and on a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the Treasury, except where the High Court orders that the whole or any part of the fine shall be otherwise disposed of.
- (6) All fines and expenses imposed in summary proceedings under this Act shall be paid to the clerk of court to be accounted for by him to the person entitled to such fines and expenses, and it shall not be necessary to specify in any sentence the person entitled to payment of such fines or expenses unless it is necessary to provide for the division of the penalty.
- (7) A court in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.

#### **Modifications etc. (not altering text)**

- C2** S. 211(3)-(6) applied (1.4.1996) by 1995 c. 43, ss. 14(1), 34, 50(2), **Sch. 1 para. 4(4)**  
 S. 211(3)-(6) applied (24.3.2003) by **Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(a)**, 458; S.S.I. 2003/210, **art. 2** (subject to transitional provisions in arts. 3-7)
- C3** S. 211(5) modified (19.2.2001) by 2000 c. 11, s. 23, **Sch. 4 para. 16(3)**; S.I. 2001/421, **art. 2**

## **212 Fines in summary proceedings.**

- (1) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a young offenders institution in default of payment of the fine, may, unless the court otherwise directs and subject to subsection (2) below, be applied towards payment of the fine, and the surplus if any shall be returned to him.
- (2) Money shall not be applied as mentioned in subsection (1) above if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.
- (3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, considers that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied

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towards payment of such sum, the court, shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before it is issued by the clerk of the court.

- (4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at that time, that any sum of money which has been found on his person should not be applied in payment of the fine adjudged to be paid by him.
- (5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to that person, may apply to such court either orally or in writing for a direction that the money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.
- (6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which has been found on his person.
- (7) A notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

### **213 Remission of fines.**

- (1) A fine may at any time be remitted in whole or in part by—
  - (a) in a case where a transfer of fine order under section 222 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or
  - (b) in any other case, the court which imposed the fine or, where that court was the High Court, by which payment was first enforceable.
- (2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 214(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.
- (3) The power conferred by subsection (1) above shall be exercisable without requiring the attendance of the accused.

### **214 Fines: time for payment and payment by instalments.**

- (1) Where a court has imposed a fine on an offender or ordered him to find caution the court shall, subject to subsection (2) below, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this section and section 216 of this Act to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.
- (2) If on the occasion of the imposition of a fine—
  - (a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or
  - (b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or

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- (c) he fails to satisfy the court that he has a fixed abode; or
- (d) the court is satisfied for any other special reason that no time should be allowed for payment,

the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.

- (3) In all cases where time is not allowed by a court for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.
- (4) Where time is allowed for payment of a fine or payment by instalments is ordered, the court shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.
- (5) Where a court has imposed imprisonment in accordance with subsection (4) above, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.
- (6) Nothing in the foregoing provisions of this section shall affect any power of the court to order a fine to be recovered by civil diligence.
- (7) Where time has been allowed for payment of a fine imposed by the court, it may, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.
- (8) Without prejudice to subsection (2) above, where a court has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit.
- (9) Where the court has ordered payment of a fine by instalments it may—
  - (a) allow further time for payment of any instalment thereof;
  - (b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed,
 and the powers conferred by this subsection shall be exercisable without requiring the attendance of the accused.

#### **Modifications etc. (not altering text)**

- C4** S. 214 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 14(2)(a), 50(2)
- C5** S. 214(2) modified (1.4.1996) by 1995 c. 43, ss. 15(2), 50(2)
- C6** S. 214(4)-(6) applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(b), 458; S.S.I. 2003/210, art. 2 (with transitional provisions in arts. 3-7)

## **215 Application for further time to pay fine.**

- (1) An application by an offender for further time in which to pay a fine imposed on him by a court, or of instalments thereof, shall be made, subject to subsection (2) below, to that court.

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- (2) Where a transfer of fine order has been made under section 222 of this Act, section 90 of the <sup>M22</sup>Magistrates' Courts Act 1980 or Article 95 of the <sup>M23</sup>Magistrates' Courts (Northern Ireland) Order 1981, an application under subsection (1) above shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.
- (3) A court to which an application is made under this section shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.
- (4) An application made under this section may be made orally or in writing.

#### Modifications etc. (not altering text)

C7 S. 215 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 14(2)(b), 50(2)

#### Marginal Citations

M22 1980 c.43.

M23 S.I. 1981/1675 (N.I. 26)

## 216 Fines: restriction on imprisonment for default.

- (1) Where a court has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, subject to subsection (2) below, it shall not impose imprisonment on an offender for failing to make payment of the fine or, as the case may be, to find caution, unless on an occasion subsequent to that sentence the court has enquired into in his presence the reason why the fine has not been paid or, as the case may be, caution has not been found.
- (2) Subsection (1) above shall not apply where the offender is in prison.
- (3) A court may, for the purpose of enabling enquiry to be made under this section—
  - (a) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation; or
  - (b) issue a warrant of apprehension.
- (4) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.
- (5) The citation of an offender to appear before a court in terms of subsection (3)(a) above shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act, and—
  - (a) the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor; and
  - (b) the forms relating to the citation of an accused shall not apply to such citation.
- (6) The following matters shall be, or as nearly as may be, in such form as is prescribed by Act of Adjournal—
  - (a) the citation of an offender under this section;
  - (b) if the citation of the offender is effected by an officer of law, the written execution, if any, of that officer of law;

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- (c) a warrant of apprehension issued by a court under subsection (4) above; and
  - (d) the minute of procedure in relation to an enquiry into the means of an offender under this section.
- (7) Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

**Modifications etc. (not altering text)**

- C8** S. 216 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 14(2)(c), 50(2)  
S. 216 applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(c), 458; S.I. 2003/210, art. 2 (with transitional provisions in arts. 3-7)
- C9** S. 216(7) modified (1.4.1997) by S.I. 1996/3255, reg. 14(1)

**217 Fines: supervision pending payment.**

- (1) Where an offender has been allowed time for payment of a fine, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person, in this section referred to as the “supervising officer”, as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.
- (2) An order made in pursuance of subsection (1) above shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under subsection (3) below.
- (3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 222 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.
- (4) Where an offender under 21 years of age has been allowed time for payment of a fine, the court shall not order the form of detention appropriate to him in default of payment of the fine unless—
- (a) he has been placed under supervision in respect of the fine; or
  - (b) the court is satisfied that it is impracticable to place him under supervision.
- (5) Where a court, on being satisfied as mentioned in subsection (4)(b) above, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.
- (6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless before doing so it has—
- (a) taken such steps as may be reasonably practicable to obtain from the supervising officer a report, which may be oral, on the offender’s conduct and means, and has considered any such report; and
  - (b) in a case where an enquiry is required by section 216 of this Act, considered such enquiry.

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- (7) When a court appoints a different supervising officer under subsection (1) above, a notice shall be sent by the clerk of the court to the offender in such form, as nearly as may be, as is prescribed by Act of Adjournal.
- (8) The supervising officer shall communicate with the offender with a view to assisting and advising him in regard to payment of the fine, and unless the fine or any instalment thereof is paid to the clerk of the court within the time allowed by the court for payment, the supervising officer shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

**Modifications etc. (not altering text)**

- C10** S. 217 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 14(2)(d), 50(2)  
S. 217 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(d), 458; S.S.I. 2003/210, art.2 (with transitional provisions in arts 3-7)

**218 Fines: supplementary provisions as to payment.**

- (1) Where under the provisions of section 214 or 217 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.
- (2) Any reference in the said sections 214 and 217 to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.
- (3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 211(6) of this Act, pay such fine in full to a constable; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.

**Modifications etc. (not altering text)**

- C11** S. 218(2)(3) applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 14(2)(e), 50(2)  
S. 218(2)(3) applied (24.3.2006) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(e), 458; S.S.I. 2003/210, art. 2 (with transitional provisions in arts. 3-7)

**219 Fines: periods of imprisonment for non-payment.**

- (1) Subject to sections 214 to 218 of this Act—
  - (a) a court may, when imposing a fine, impose a period of imprisonment in default of payment; or
  - (b) where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 214(2) of this Act applies, immediately) the court may, subject to section 235(1) of this Act, impose a period of imprisonment for such failure either with immediate effect or to take effect in the event of



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the person failing to pay the fine or any part or instalment of it by such further time as the court may order,

whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.

- (2) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

<b>Amount of Fine or Caution</b>	<b>Maximum Period of Imprisonment</b>
Not exceeding £200.....	7 days
Exceeding £200 but not exceeding £500.....	14 days
Exceeding £500 but not exceeding £1,000.....	28 days
Exceeding £1,000 but not exceeding £2,500.....	45 days
Exceeding £2,500 but not exceeding £5,000.....	3 months
Exceeding £5,000 but not exceeding £10,000.....	6 months
Exceeding £10,000 but not exceeding £20,000.....	12 months
Exceeding £20,000 but not exceeding £50,000.....	18 months
Exceeding £50,000 but not exceeding £100,000.....	2 years
Exceeding £100,000 but not exceeding £250,000.....	3 years
Exceeding £250,000 but not exceeding £1 Million.....	5 years
Exceeding £1 Million.....	10 years

- (3) Where an offender is fined on the same day before the same court for offences charged in the same indictment or complaint or in separate indictments or complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.

- (4) Where a court has imposed a period of imprisonment in default of payment of a fine, and—

- (a) an instalment of the fine is not paid at the time ordered; or  
 (b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.



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- (5) Where no period of imprisonment in default of payment of a fine has been imposed and—
- (a) an instalment of the fine is not paid at the time ordered; or
  - (b) part only of the fine has been paid within the time allowed for payment,
- the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which could have been imposed by virtue of the Table in subsection (2) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.
- (6) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.
- (7) The provisions of this section shall be without prejudice to the operation of section 220 of this Act.
- (8) Where in any case—
- (a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 3(3) of this Act would be inadequate; and
  - (b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 252(2) of this Act and section [F33]118(2) of the Proceeds of Crime Act 2002] exceeds that number of years,
- he shall remit the case to the High Court for sentence.

#### Textual Amendments

**F33** Words in s. 219(8)(b) substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456, 458, [Sch. 11 para. 29\(4\)](#); [S.S.I. 2003/210](#), [art. 2](#), [Sch.](#) (subject to arts. 3-7)

#### Modifications etc. (not altering text)

**C12** S. 219 applied (with modifications) (1.4.1996) by [1995 c. 43](#), ss. [14\(2\)\(f\)](#), [50\(2\)](#)  
S. 219 applied (with modifications) (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. [118\(1\)\(2\)\(f\)\(5\)](#), 458; [S.S.I. 2003/210](#), [art. 2](#) (subject to arts. 3-7)

## 220 Fines: part payment by prisoners.

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court pays to the governor of the prison, under conditions prescribed by rules made under the <sup>M24</sup>Prisons (Scotland) Act 1989, any sum in part satisfaction of the fine, the term of imprisonment [F34]imposed under section 219 of this Act in respect of the fine] shall be reduced (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment.

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- (2) The day on which any sum is paid as mentioned in subsection (1) above shall not be regarded as a day served by the prisoner as part of the said term of imprisonment.
- (3) All sums paid under this section shall be handed over on receipt by the governor of the prison to the clerk of the court in which the conviction was obtained, and thereafter paid and applied *pro tanto* in the same manner and for the same purposes as sums adjudged to be paid by the conviction and sentence of the court, and paid and recovered in terms thereof, are lawfully paid and applied.
- (4) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

#### Textual Amendments

**F34** Words in s. 220(1) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 85, 89, [Sch. 4 para. 3\(3\)](#); [S.S.I. 2003/288](#), [art. 2](#), Sch.

#### Modifications etc. (not altering text)

**C13** S. 220 applied (with modifications) (1.4.1996) by [1995 c. 43](#), [ss. 14\(2\)\(g\)](#), 50(2)  
S. 220 applied (with modifications) (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [ss. 118\(1\)\(2\)\(g\)](#), 458; [S.S.I. 2003/210](#), [art. 2](#) (with transitional provisions in [arts. 3-7](#))

#### Marginal Citations

**M24** [1989 c.45](#).

## 221 Fines: recovery by civil diligence.

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Act or in any case in which a court may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine a warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—
  - (a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the [<sup>F35</sup>attachment] of articles belonging to him and, if necessary for the purpose of executing the [<sup>F35</sup>attachment], the opening of shut and lockfast places;
  - (b) an arrestment other than an arrestment of earnings in the hands of his employer,
 and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.
- (2) Subject to subsection (3) below, proceedings by civil diligence under this section may be taken at any time after the imposition of the fine to which they relate.
- (3) No such proceedings shall be authorised after the offender has been imprisoned in consequence of his having defaulted in payment of the fine.
- (4) Where proceedings by civil diligence for the recovery of a fine or caution are taken, imprisonment for non-payment of the fine or for failure to find such caution shall

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remain competent and such proceedings may be authorised after the court has imposed imprisonment for, or in the event of, the non-payment or the failure but before imprisonment has followed such imposition.

#### Textual Amendments

**F35** Words in s. 221(1)(a) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 25** (with s. 63)

#### Modifications etc. (not altering text)

- C14** S. 221 applied (with modifications) (1.4.1996) by [1995 c. 43](#), **ss. 14(2)(h)**, 50(2)  
S. 221 applied (1.1.2003) by [Fur Farming \(Prohibition\) \(Scotland\) Act 2002 \(asp 10\)](#), **s. 3(2)**; S.S.I. 2002/519, **art. 2**
- C15** S. 221 applied (1.3.2007) by [The Sea Fishing \(Prohibition on the Removal of Shark Fins\) \(Scotland\) Order 2007 \(S.S.I. 2007/39\)](#), **art. 4(3)**

## 222 Transfer of fine orders.

- (1) Where a court has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—
- within the jurisdiction of another court in Scotland; or
  - in any petty sessions area in England and Wales; or
  - in any petty sessions district in Northern Ireland,
- the court may order that payment of the fine shall be enforceable by that other court or in that petty sessions area or petty sessions district as the case may be.
- (2) An order under this section (in this section referred to as a “transfer of fine order”) shall specify the court by which or the petty sessions area or petty sessions district in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.
- (3) Subject to subsections (4) and (5) below, where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.
- (4) Where—
- the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and
  - the clerk of that court, within 14 days of receiving the notice required by section 223(1) of this Act, sends to the clerk of the court which made the order notice to that effect,
- the order shall cease to have effect.
- (5) Where a transfer of fine order ceases to have effect by virtue of subsection (4) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.
- (6) Where a transfer of fine order under this section, section 90 of the <sup>M25</sup>Magistrates’ Courts Act 1980 or Article 95 of the <sup>M26</sup>Magistrates’ Courts (Northern Ireland) Order 1981 specifies a court of summary jurisdiction in Scotland, that court and the clerk of

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that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section, the said Act of 1980 or the said Order of 1981 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court.

- (7) The functions of the court to which subsection (6) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the <sup>M27</sup>Criminal Justice Act 1991 (power to deduct fines etc from income support).
- (8) Where a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in pursuance of section 31 of the <sup>M28</sup>Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 219 of this Act.

#### Modifications etc. (not altering text)

- C16** S. 222 applied (with modifications) (1.4.1996) by [1995 c. 43, ss. 14\(2\)\(i\), 50\(2\)](#)  
 S. 222 applied (with modifications) (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\), ss. 118\(1\)\(2\)\(i\), 458; S.S.I. 2003/210, art. 2](#) (with transitional provisions in arts. 3-7)

#### Marginal Citations

- M25** [1980 c.43.](#)  
**M26** [S.I. 1981/1675](#)  
**M27** [1991 c.53.](#)  
**M28** [1973 c.62.](#)

### 223 Transfer of fines: procedure for clerk of court.

- (1) Where a court makes a transfer of fine order under section 222 of this Act, the clerk of the court shall send to the clerk of the court specified in the order—
- (a) a notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form;
  - (b) a statement of the offence of which the offender was convicted; and
  - (c) a statement of the steps, if any, taken to recover the fine,
- and shall give him such further information, if any, as, in his opinion, is likely to assist the court specified in the order in recovering the fine.
- (2) In the case of a further transfer of fine order, the clerk of the court which made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice sent to the clerk of the court specified in the order.
- (3) The clerk of court specified in a transfer of fine order shall, as soon as may be after he has received the notice mentioned in subsection (1)(a) above, send an intimation

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to the offender in the form prescribed by Act of Adjournal or as nearly as may be in such form.

- (4) The clerk of court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine to the clerk of the court by which the fine was imposed, and if the sentence has been enforced otherwise than by payment of the fine, he shall inform the clerk of court how the sentence was enforced.

#### Modifications etc. (not altering text)

**C17** S. 223 applied (1.4.1996) by 1995 c. 43, ss. 14(2)(j), 50(2)

S. 223 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(j), 458; S.S.I. 2003/210, art. 2 (with transitional provisions in arts. 3-7)

VALID FROM 12/10/2009

### <sup>F36</sup>Fines: discharge from imprisonment and penalties

#### Textual Amendments

**F36** Ss. 223A-223T and cross-headings inserted (12.10.2009) by The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342), art. 3 (with art. 2)

#### 224 Discharge from imprisonment to be specified.

All warrants of imprisonment in default of payment of a fine, or on failure to find caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding the fine has not been paid, or caution found.

#### Modifications etc. (not altering text)

**C18** S. 224 applied (1.4.1996) by 1995 c. 43, ss. 14(2)(k), 50(2)

S. 224 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 118(1)(2)(k), 458; S.S.I. 2003/210, art. 2 (with transitional provisions in arts. 3-7)

#### <sup>F36</sup>225 Penalties: standard scale, prescribed sum and uprating.

- (1) There shall be a standard scale of fines for offences triable only summarily, which shall be known as “the standard scale”.
- (2) The standard scale is shown below—

Level on the scale	Amount of Fine
1	£ 200
2	£ 500
3	£1,000

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4	£2,500
5	£5,000

- (3) Any reference in any enactment, whenever passed or made, to a specified level on the standard scale shall be construed as referring to the amount which corresponds to that level on the standard scale referred to in subsection (2) above.
- (4) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time being specified in the provisions mentioned in subsection (5) below such other sum or sums as appear to him justified by the change.
- (5) The provisions referred to in subsection (4) above are—
- subsection (2) above;
  - subsection (8) below;
  - section 219(2) of this Act;
  - column 5 or 6 of Schedule 4 to the <sup>M29</sup>Misuse of Drugs Act 1971 so far as the column in question relates to the offences under provisions of that Act specified in column 1 of that Schedule in respect of which the maximum fines were increased by Part II of Schedule 8 to the <sup>M30</sup>Criminal Justice and Public Order Act 1994.
- (6) In subsection (4) above “the relevant date” means—
- in relation to the first order made under that subsection, the date the last order was made under section 289D(1) of the <sup>M31</sup>Criminal Procedure (Scotland) Act 1975; and
  - in relation to each subsequent order, the date of the previous order.
- (7) An order under subsection (4) above—
- shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder; and
  - without prejudice to Schedule 14 to the <sup>M32</sup>Criminal Law Act 1977, shall not affect the punishment for an offence committed before that order comes into force.
- (8) In this Act “the prescribed sum” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (4) above.]

#### Marginal Citations

**M29** 1971 c.38.

**M30** 1994 c.33.

**M31** 1975 c.21.

**M32** 1977 c.45.

## 226 Penalties: exceptionally high maximum fines.

- (1) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—



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- (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
  - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
- (a) is higher than level 5 on the standard scale; and
  - (b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.
- (3) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
- (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
  - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.
- (4) Subsection (3) above applies to any sum which—
- (a) is higher than the statutory maximum; and
  - (b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.
- (5) An order under this section—
- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) shall not affect the punishment for an offence committed before that order comes into force.
- (6) In this section “enactment” includes an enactment contained in an Act or subordinate instrument passed or made after the commencement of this Act.]

VALID FROM 10/03/2008

*Enforcement of fines etc.: fines enforcement officers*

**[<sup>F37</sup>226A Fines enforcement officers**

- (1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.
- (2) A FEO has the general functions of—
  - (a) providing information and advice to offenders as regards payment of relevant penalties;
  - (b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).
- (3) Where an offender is subject to two or more relevant penalties, a FEO—
  - (a) in exercising the function conferred by subsection (2)(b) above;

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- (b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act, shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.
- (4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.
- (5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—
- (a) the offender; and
  - (b) any FEO for the district in which the enforcement order was made.
- (6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—
- (a) from any FEO for the district in which the order was made; and
  - (b) to a FEO for the district in which the offender resides.
- (7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.
- (8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

#### Textual Amendments

**F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 55, 84**; [S.I. 2008/42](#), **art. 3**, Sch.

#### 226B Enforcement orders

- (1) When a court grants time to pay (or further time to pay) a relevant penalty (or an instalment of it) under section 214 or 215 of this Act, the court shall make an enforcement order under this subsection in relation to payment of the penalty.
- (2) Despite subsection (1) above, a court need not make an enforcement order where it considers that it would not be appropriate to do so in the circumstances of the case.
- (3) Where, by virtue of subsection (2) above, a court does not make an enforcement order under subsection (1) above, it may subsequently make an enforcement order under that subsection in relation to payment of the penalty.
- (4) Where—
- (a) a person has accepted (or is deemed to have accepted)—
    - (i) a fixed penalty offer under section 302(1) of this Act; or
    - (ii) a compensation offer under section 302A(1) of this Act; and
  - (b) payment (or payment of an instalment) has not been made as required by the offer,



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the relevant court may make an enforcement order under this subsection in relation to the payment due.

(5) Where—

(a) a person is liable to pay—

(i) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53), which has been registered under section 71 of that Act; or

(ii) by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), a fixed penalty notice given under section 129 (fixed penalty notices) of that Act; and

(b) payment (or payment of an instalment) has not been made as required by the penalty,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

(6) Where there is transferred to a court in Scotland a fine—

(a) imposed by a court in England and Wales; and

(b) in relation to which a collection order (within the meaning of Part 4 of Schedule 5 to the Courts Act 2003 (c. 39)) has been made,

the relevant court may make an enforcement order under this subsection in relation to payment of the fine.

(7) An enforcement order under subsection (4), (5) or (6) above may be made—

(a) on the oral or written application of the clerk of court; and

(b) without the offender being present.

(8) An enforcement order shall—

(a) state the amount of the relevant penalty;

(b) require payment of the relevant penalty in accordance with—

(i) such arrangements as to the amount of the instalments by which the relevant penalty should be paid and as to the intervals at which such instalments should be paid;

(ii) such other arrangements,  
as the order may specify;

(c) provide contact details for the FEO dealing with the enforcement order;

(d) explain the effect of the enforcement order.

(9) Where a court makes (or is to make) an enforcement order in relation to a fine—

(a) a court may not impose imprisonment—

(i) under section 214(4) of this Act; or

(ii) under section 219(1) of this Act,

in respect of the fine;

(b) a court may not—

(i) allow further time for payment under subsection (9)(a) of section 214 of this Act; or

(ii) make an order under subsection (9)(b) of that section,  
in respect of the fine;

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(c) the offender may not make an application under section 215(1) of this Act in respect of the fine.

(10) Paragraphs (a) to (c) of subsection (9) above apply for so long as the enforcement order continues to have effect.

(11) An enforcement order ceases to have effect if—

- (a) the relevant penalty is paid (including by application of any proceeds of enforcement action); or
- (b) it is revoked under section 226G(9)(a) of this Act.

### **226C Variation for further time to pay**

(1) A FEO dealing with an enforcement order may—

- (a) on the application of the offender; and
- (b) having regard to the circumstances of the offender,

vary the arrangements specified in the order for payment of the relevant penalty.

(2) That is, by—

- (a) allowing the offender further time to pay the penalty (or any instalment of it);
- (b) allowing the offender to pay the penalty by instalments of such lesser amounts, or at such longer intervals, as those specified in the enforcement order.

(3) An application by an offender for the purpose of subsection (1) above may be made orally or in writing.

(4) A FEO shall notify the offender concerned of any—

- (a) variation under subsection (1) above;
- (b) refusal of an application for variation under that subsection.

#### **Textual Amendments**

**F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 55, 84; S.I. 2008/42, art. 3, Sch.

### **226D Seizure of vehicles**

(1) A FEO may, for the purpose mentioned in subsection (2) below, direct that a motor vehicle belonging to the offender be—

- (a) immobilised;
- (b) impounded.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(3) For the purposes of this section—

- (a) a vehicle belongs to an offender if it is registered under the Vehicle Excise and Registration Act 1994 (c. 22) in the offender's name;
- (b) a reference—

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- (i) to a vehicle being immobilised is to its being fitted with an immobilisation device in accordance with regulations made under subsection (12) below;
  - (ii) to a vehicle being impounded is to its being taken to a place of custody in accordance with regulations made under that subsection;
- (c) a direction under subsection (1) above is referred to as a “seizure order”.
- (4) A FEO shall notify the offender concerned that a seizure order has been carried out.
- (5) Where—
  - (a) a seizure order has been carried out; and
  - (b) at the end of such period as may be specified in regulations made under subsection (12) below, any part of the relevant penalty remains unpaid,
 a FEO may apply to the relevant court for an order under subsection (6) below.
- (6) The court may make an order under this subsection—
  - (a) for the sale or other disposal of the vehicle in accordance with regulations made under subsection (12) below;
  - (b) for any proceeds of the disposal to be applied in accordance with regulations made under that subsection in payment of or towards the unpaid amount of the relevant penalty;
  - (c) for any remainder of those proceeds to be applied in accordance with regulations made under that subsection in payment of or towards any reasonable expenses incurred by the FEO in relation to the seizure order;
  - (d) subject to paragraphs (b) and (c) above, for any balance to be given to the offender.
- (7) Where, before a vehicle which is the subject of a seizure order is disposed of—
  - (a) a third party claims to own the vehicle; and
  - (b) either—
    - (i) a FEO is satisfied that the claim is valid (and that there are no reasonable grounds for believing that the claim is disputed by the offender or any other person from whose possession the vehicle was taken); or
    - (ii) the sheriff, on an application by the third party, makes an order that the sheriff is so satisfied,
 the seizure order ceases to have effect.
- (8) An application for the purposes of subsection (7)(b)(ii) above does not preclude any other proceedings for recovery of the vehicle.
- (9) A person commits an offence if, without lawful authority or reasonable excuse, the person removes or attempts to remove—
  - (a) an immobilisation device fitted;
  - (b) a notice fixed,
 to a motor vehicle in pursuance of a seizure order.
- (10) A person guilty of an offence under subsection (9) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) A seizure order must not be made in respect of a vehicle—
  - (a) which displays a valid disabled person's badge; or

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- (b) in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person.
- (12) The Scottish Ministers may make regulations for the purposes of and in connection with this section.
- (13) Regulations under subsection (12) above may, in particular, include provision—
- (a) as to circumstances in which a seizure order may (or may not) be made;
  - (b) as regards the value of a vehicle seizable compared to the amount of a relevant penalty which is unpaid;
  - (c) by reference to subsection (3)(a) and (7) above or otherwise, for protecting the interests of owners of vehicles apart from offenders;
  - (d) relating to subsections (3)(b), (5)(b) and (6) above;
  - (e) as to the fixing of notices to vehicles to which an immobilisation device has been fitted;
  - (f) as to the keeping and release of vehicles immobilised or impounded (including as to conditions of release);
  - (g) as to the payment of reasonable fees, charges or other costs in relation to—
    - (i) the immobilisation or impounding of vehicles;
    - (ii) the keeping, release or disposal of vehicles immobilised or impounded.
- (14) Regulations under subsection (12) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (15) In this section—
- “disabled person's badge” means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44);
- “immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (c. 27);
- “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads (except that section 189 of the Road Traffic Act 1988 (c. 52) applies for the purposes of this section as it applies for the purposes of that Act).

#### Textual Amendments

- F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\), ss. 55, 84; S.I. 2008/42, art. 3, Sch.](#)

#### 226E Deduction from benefits

- (1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.
- (2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

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### Textual Amendments

**F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 55, 84](#); S.I. 2008/42, [art. 3](#), Sch.

## 226F Powers of diligence

- (1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.
- (2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.
- (3) The types of diligence are—
  - (a) arrestment of earnings; and
  - (b) arrestment of funds standing in accounts held at any bank or other financial institution.
- (4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.
- (5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.
- (6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.
- (7) Provision in regulations under subsection (6) above may, in particular—
  - (a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;
  - (b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

### Textual Amendments

**F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 55, 84](#); S.I. 2008/42, [art. 3](#), Sch.

## 226G Reference of case to court

- (1) A FEO may refer an enforcement order to the relevant court where—

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- (a) the FEO believes that payment of a relevant penalty, or any remaining part of a relevant penalty, to which an enforcement order relates is unlikely to be obtained;
  - (b) for any other reason (including failure of the offender to co-operate with the FEO) the FEO considers it expedient to do so.
- (2) A FEO may make a reference under subsection (1) above at any time from the day after the enforcement order is made.
  - (3) When making a reference under subsection (1) above, the FEO shall provide the court with a report on the circumstances of the case.
  - (4) A report under subsection (3) above shall include, in particular—
    - (a) a copy of any report from a supervising officer received by the FEO under section 217(9) of this Act; and
    - (b) information about—
      - (i) the steps taken by the enforcement officer to obtain payment of or towards the relevant penalty; and
      - (ii) any effort (or lack of effort) made by the offender to make payment of or towards the penalty.
  - (5) Where a reference is made under subsection (1) above, the relevant court shall enquire of the offender as to the reason why the relevant penalty (or an instalment of it) has not been paid.
  - (6) Subsection (5) above does not apply where the offender is in prison.
  - (7) Subsections (3) to (7) of section 216 of this Act apply in relation to subsection (5) above as they apply in relation to subsection (1) of that section.
  - (8) After the court has considered—
    - (a) the report provided by the FEO under subsection (3) above; and
    - (b) any information obtained by enquiry under subsection (5) above,
 the court may dispose of the case as mentioned in subsection (9) below.
  - (9) That is, the court may—
    - (a) revoke the enforcement order and deal with the offender as if the enforcement order had never been made;
    - (b) vary the enforcement order;
    - (c) confirm the enforcement order as previously made;
    - (d) direct the FEO to take specified steps to secure payment of or towards the relevant penalty in accordance with the enforcement order (including as varied under paragraph (b) above);
    - (e) make such other order as it thinks fit.

#### Textual Amendments

- F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 55, 84**; S.I. 2008/42, **art. 3, Sch.**

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## 226H Review of actions of FEO

- (1) The offender may apply to the relevant court for review—
  - (a) in relation to an enforcement order—
    - (i) of any variation under section 226C(1) of this Act;
    - (ii) of any refusal of an application for variation under that section;
  - (b) of the making of a seizure order under section 226D(1) of this Act.
- (2) An application under subsection (1) above requires to be made within 7 days of notification under section 226C(4) of this Act or (as the case may be) section 226D(4) of this Act.
- (3) On an application under subsection (1) above, the relevant court may—
  - (a) confirm, vary or quash the decision of the FEO;
  - (b) make such other order as it thinks fit.

### Textual Amendments

- F37** Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 55, 84**; S.I. 2008/42, **art. 3**, Sch.

VALID FROM 12/10/2009

## <sup>F38</sup>226HA Judicial co-operation in criminal matters: mutual recognition of financial penalties: requests to other member States

- (1) Subsection (4) applies where—
  - (a) an offender is subject to a relevant penalty (including such a penalty in relation to the payment of which an enforcement order has been made);
  - (b) the relevant penalty is not paid (or, where relevant, has not been paid in accordance with the enforcement order);
  - (c) there is no appeal outstanding in relation to the relevant penalty;
  - (d) a FEO is exercising (or intends to exercise) the function conferred—
    - (i) by paragraph (a) of section 226A(2) of this Act in respect of the relevant penalty; or
    - (ii) by paragraph (b) of that section in respect of any enforcement order relating to the relevant penalty; and
  - (e) it appears to the FEO that the offender is normally resident, or has property or income, in a member State of the European Union other than the United Kingdom.
- (2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—
  - (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal; or
  - (b) such an appeal has been brought but the proceedings on appeal have been concluded.



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- (3) In subsections (1)(c) and (2) “appeal” in respect of financial penalties mentioned in section 223A(5)(b) and (c) includes a request made under section 302C of this Act that such a penalty be recalled.
- (4) The FEO may issue a certificate as mentioned in section 223A(1) of this Act.
- (5) Subsection (4) does not apply where the designated officer of the competent authority for Scotland has issued such a certificate in respect of the financial penalty.
- (6) The FEO must give the central authority for Scotland any certificate issued under subsection (4), together with a copy, or extract, of the decision requiring payment of the relevant penalty.
- (7) Where the central authority for Scotland receives the documents mentioned in subsection (6) above, subsections (3) to (6) of section 223B of this Act apply as if the documents had been given under subsection (2) of that section.]]

#### Textual Amendments

**F38** S. 226HA inserted (12.10.2009) by The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342), **art. 4** (with art. 2)

### 226I Enforcement of fines etc.: interpretation

- (1) In this section and sections 226A to 226H of this Act—
  - “enforcement order” is to be construed in accordance with section 226B(1) and (4) to (6) of this Act;
  - “FEO” means a fines enforcement officer;
  - “offender” means the person who is liable to pay a relevant penalty;
  - “relevant court”—
    - (a) in the case of a fine or compensation order, means—
      - (i) the court which imposed the penalty; or
      - (ii) where the penalty is transferred to another court, that other court;
    - (b) in the case of another relevant penalty (apart from a penalty specified by order for the purposes of this section), means—
      - (i) the court whose clerk is specified in the notice to the offender; or
      - (ii) where the penalty is transferred to another court, that other court;
    - (c) in the case of a penalty specified by order for the purposes of this section, means—
      - (i) the court whose clerk is specified in the notice to the offender;
      - (ii) where the penalty is transferred to another court, that other court; or
      - (iii) such other court as the order may specify for those purposes;
  - “relevant penalty” means—
    - (a) a fine;
    - (b) a compensation order imposed under section 249 of this Act;

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- (c) a fixed penalty offer made under section 302(1) of this Act;
  - (d) a compensation offer made under section 302A(1) of this Act;
  - (e) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences) or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53);
  - (f) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);
  - (g) such other penalty as the Scottish Ministers may by order specify for the purposes of this section.
- (2) An order specifying a penalty or a court for the purpose of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

### Caution

#### 227 Caution.

Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

VALID FROM 01/02/2011

### <sup>F39</sup>Community payback orders

#### Textual Amendments

**F39** Ss. 227A-227ZN and cross-headings inserted (1.2.2011 except for the insertion of s. 227ZM, 1.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 14(1)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

#### 227A Community payback orders

- (1) Where a person (the “offender”) is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order on the offender.
- (2) A community payback order is an order imposing one or more of the following requirements—
  - (a) an offender supervision requirement,
  - (b) a compensation requirement,
  - (c) an unpaid work or other activity requirement,
  - (d) a programme requirement,
  - (e) a residence requirement,
  - (f) a mental health treatment requirement,

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- (g) a drug treatment requirement,
  - (h) an alcohol treatment requirement,
  - (i) a conduct requirement.
- (3) Subsection (4) applies where—
- (a) a person (the “offender”) is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and
  - (b) where the offence is also punishable by imprisonment, the court decides not to impose—
    - (i) a sentence of imprisonment, or
    - (ii) a community payback order under subsection (1) instead of a sentence of imprisonment.
- (4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—
- (a) an offender supervision requirement,
  - (b) a level 1 unpaid work or other activity requirement,
  - (c) a conduct requirement.
- (5) A justice of the peace court may only impose a community payback order imposing one or more of the following requirements—
- (a) an offender supervision requirement,
  - (b) a compensation requirement,
  - (c) an unpaid work or other activity requirement,
  - (d) a residence requirement,
  - (e) a conduct requirement.
- (6) Subsection (5)(c) is subject to section 227J(4).
- (7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed by a community payback order imposed by a justice of the peace court.
- (8) An order is not to be made under subsection (7) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.
- (9) In this section and sections 227B to 227ZK, except where the context requires otherwise—
- “court” means the High Court, the sheriff or a justice of the peace court,
  - “imprisonment” includes detention.

## **227B Community payback order: procedure prior to imposition**

- (1) This section applies where a court is considering imposing a community payback order on an offender.
- (2) The court must not impose the order unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.

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- (3) Before imposing a community payback order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (4) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing information about the offender and the offender's circumstances.
- (5) An Act of Adjournal may prescribe—
  - (a) the form of a report under subsection (4), and
  - (b) the particular information to be contained in it.
- (6) Subsection (4) does not apply where the court is considering imposing a community payback order—
  - (a) imposing only a level 1 unpaid work or other activity requirement, or
  - (b) under section 227M(2).
- (7) The clerk of the court must give a copy of any report obtained under subsection (4) to—
  - (a) the offender,
  - (b) the offender's solicitor (if any), and
  - (c) the prosecutor.
- (8) Before imposing the order, the court must explain to the offender in ordinary language—
  - (a) the purpose and effect of each of the requirements to be imposed by the order,
  - (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and
  - (c) where the court proposes to include in the order provision under section 227X for it to be reviewed, the arrangements for such a review.
- (9) The court must not impose the order unless the offender has, after the court has explained those matters, confirmed that the offender—
  - (a) understands those matters, and
  - (b) is willing to comply with each of the requirements to be imposed by the order.
- (10) Subsection (9)(b) does not apply where the court is considering imposing a community payback order under section 227M(2).

### **227C Community payback order: responsible officer**

- (1) This section applies where a court imposes a community payback order on an offender.
- (2) The court must, in imposing the order—
  - (a) specify the locality in which the offender resides or will reside for the duration of the order,
  - (b) require the local authority within whose area that locality is situated to nominate, within two days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,
  - (c) require the offender to comply with any instructions given by the responsible officer—

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- (i) about keeping in touch with the responsible officer, or
  - (ii) for the purposes of subsection (3),
  - (d) require the offender to report to the responsible officer in accordance with instructions given by that officer,
  - (e) require the offender to notify the responsible officer without delay of—
    - (i) any change of the offender's address, and
    - (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and
  - (f) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.
- (3) The responsible officer is responsible for—
- (a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,
  - (b) promoting compliance with those requirements by the offender,
  - (c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order.
- (4) References in this Act to the responsible officer are, in relation to an offender on whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).
- (5) In reckoning the period of two days for the purposes of subsection (2)(b), no account is to be taken of a Saturday or Sunday or any day which is a local or public holiday in the area of the local authority concerned.

#### **227D Community payback order: further provision**

- (1) Where a community payback order is imposed on an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.
- (2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.
- (3) The imposition by a court of a community payback order on an offender does not prevent the court imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.
- (4) Where a court imposes a community payback order on an offender, the clerk of the court must ensure that—
  - (a) a copy of the order is given to—
    - (i) the offender, and
    - (ii) the local authority within whose area the offender resides or will reside, and
  - (b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).
- (5) A copy of the order may be given to the offender—

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- (a) by being delivered personally to the offender, or
  - (b) by being sent—
    - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or
    - (ii) by a postal service which provides for the delivery of the document to be recorded.
- (6) A community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

#### **227E Requirement to avoid conflict with religious beliefs, work etc.**

- (1) In imposing a community payback order on an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—
- (a) a conflict with the offender's religious beliefs,
  - (b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.
- (2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

#### **227F Payment of offenders' travelling and other expenses**

- (1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.
- (2) An order under subsection (1) may—
- (a) specify expenses or provide for them to be determined under the order,
  - (b) provide for the payments to be made by or on behalf of local authorities,
  - (c) make different provision for different purposes.
- (3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 01/02/2011

### *Offender supervision requirement*

#### **227G Offender supervision requirement**

- (1) In this Act, an “offender supervision requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender's rehabilitation.
- (2) On imposing a community payback order, the court must impose an offender supervision requirement if—

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- (a) the offender is under 18 years of age at the time the order is imposed, or
- (b) the court, in the order, imposes—
  - (i) a compensation requirement,
  - (ii) a programme requirement,
  - (iii) a residence requirement,
  - (iv) a mental health requirement,
  - (v) a drug treatment requirement,
  - (vi) an alcohol treatment requirement, or
  - (vii) a conduct requirement.
- (3) The specified period must be at least 6 months and not more than 3 years.
- (4) Subsection (3) is subject to subsection (5) and section 227ZE(4).
- (5) In the case of an offender supervision requirement imposed on a person aged 16 or 17 along with only a level 1 unpaid work or other activity requirement, the specified period must be no more than whichever is the greater of—
  - (a) the specified period under section 227L in relation to the level 1 unpaid work or other activity requirement, and
  - (b) 3 months.
- (6) In this section, “specified”, in relation to an offender supervision requirement, means specified in the requirement.

VALID FROM 01/02/2011

### *Compensation requirement*

#### **227H Compensation requirement**

- (1) In this Act, a “compensation requirement” is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.
- (2) In subsection (1)—
  - “relevant matter” means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and
  - “relevant person” means a person in whose favour the compensation could be awarded by such a compensation order.
- (3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.
- (4) The offender must complete payment of the compensation before the earlier of the following—
  - (a) the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,
  - (b) the beginning of the period of 2 months ending with the day on which the offender supervision requirement imposed under section 227G(2) ends.



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- (5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—
- (a) section 249(3), (4), (5) and (8) to (10),
  - (b) section 250(2),
  - (c) section 251(1), (1A) and (2)(b), and
  - (d) section 253.

VALID FROM 01/02/2011

*Unpaid work or other activity requirement*

**2271 Unpaid work or other activity requirement**

- (1) In this Act, an “unpaid work or other activity requirement” is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—
  - (a) unpaid work, or
  - (b) unpaid work and other activity.
- (2) Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.
- (3) The nature of the unpaid work and any other activity to be undertaken by the offender is to be determined by the responsible officer.
- (4) The number of hours that may be specified in the requirement must be (in total)—
  - (a) at least 20 hours, and
  - (b) not more than 300 hours.
- (5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a “level 1 unpaid work or other activity requirement”.
- (6) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a “level 2 unpaid work or other activity requirement”.
- (7) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (4) to (6).
- (8) An order under subsection (7) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

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*Provision*

*Range*

*No fewer than*

*No more than*

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Subsection (4)(a)	10 hours	40 hours
Subsection (4)(b)	250 hours	350 hours
Subsections (5) and (6)	70 hours	150 hours

(9) An order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) In this section, “specified”, in relation to an unpaid work or other activity requirement, means specified in the requirement.

### **227J Unpaid work or other activity requirement: further provision**

(1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.

(2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(4), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.

(3) Subsection (2) does not apply where the court is considering imposing a community payback order—

- (a) imposing only a level 1 unpaid work or other activity requirement, or
- (b) under section 227M(2).

(4) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—

- (a) the Scottish Ministers by regulations made by statutory instrument so provide, and
- (b) the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.

(5) Regulations are not to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

### **227K Allocation of hours between unpaid work and other activity**

(1) Subject to subsection (2), it is for the responsible officer to determine how many out of the number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—

- (a) unpaid work, and
- (b) any other activity to be undertaken.

(2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—

- (a) 30% of the number of hours specified in the requirement, and
- (b) 30 hours.

(3) The Scottish Ministers may by order made by statutory instrument—

- (a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),

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(b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).

(4) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

#### **227L Time limit for completion of unpaid work or other activity**

(1) The number of hours of unpaid work and any other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period beginning with the imposition of the requirement.

(2) The “specified period” is—

- (a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,
- (b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.

#### **227M Fine defaulters**

(1) This section applies where—

- (a) a fine has been imposed on an offender in respect of an offence,
- (b) the offender fails to pay the fine or an instalment of the fine,
- (c) the offender is not serving a sentence of imprisonment, and
- (d) apart from this section, the court would have imposed a period of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.

(2) Instead of imposing a period of imprisonment under section 219(1) of this Act, the court—

- (a) where the amount of the fine or the instalment does not exceed level 2 on the standard scale, must impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement,
- (b) where the amount of the fine or the instalment exceeds that level, may impose such a community payback order.

(3) The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose an offender supervision requirement.

(4) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the number of hours specified in the requirement must not exceed 50.

(5) On completion of the hours of unpaid work and any other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).

(6) If, after a community payback order is imposed on an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.

(7) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (7).

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(8) In this section, “court” does not include the High Court.

### **227N Offenders subject to more than one unpaid work or other activity requirement**

(1) This section applies where—

- (a) a court is considering imposing an unpaid work or other activity requirement on an offender (referred to as the “new requirement”), and
- (b) at the time the court is considering imposing the requirement, there is already in effect one or more community payback orders imposing such a requirement on the same offender (each referred to as an “existing requirement”).

(2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.

(3) Where the court makes a direction under subsection (2), hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.

(4) Subsection (5) applies where the court does not make a direction under subsection (2).

(5) The maximum number of hours which may be specified in the new requirement is the number of hours specified in section 227I(4)(b) less the aggregate of the number of hours of unpaid work or activity still to be completed under each existing requirement at the time the new requirement is imposed.

(6) In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.

(7) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(4)(a), the court must not impose the new requirement.

### **227O Rules about unpaid work and other activity**

(1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.

(2) Rules under subsection (1) may in particular make provision for—

- (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
- (b) reckoning the time spent undertaking unpaid work or other activity,
- (c) the keeping of records of unpaid work and any other activity undertaken.

(3) Rules under subsection (1) may—

- (a) confer functions on responsible officers,
- (b) contain rules about the way responsible officers are to exercise functions under this Act.

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- (4) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 01/02/2011

### *Programme requirement*

#### **227P Programme requirement**

- (1) In this Act, a “programme requirement” is, in relation to an offender, a requirement that the offender must participate in a specified programme, at the specified place and on the specified number of days.
- (2) In this section, “programme” means a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs.
- (3) A court may impose a programme requirement on an offender only if the specified programme is one which has been recommended by an officer of a local authority as being suitable for the offender to participate in.
- (4) If an offender's compliance with a proposed programme requirement would involve the co-operation of a person other than the offender, the court may impose the requirement only if the other person consents.
- (5) A court may not impose a programme requirement that would require an offender to participate in a specified programme after the expiry of the period specified in the offender supervision requirement to be imposed at the same time as the programme requirement (by virtue of section 227G(2)(b)).
- (6) Where the court imposes a programme requirement on an offender, the requirement is to be taken to include a requirement that the offender, while attending the specified programme, complies with any instructions given by or on behalf of the person in charge of the programme.
- (7) In this section, “specified”, in relation to a programme requirement, means specified in the requirement.

VALID FROM 01/02/2011

### *Residence requirement*

#### **227Q Residence requirement**

- (1) In this Act, a “residence requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must reside at a specified place.
- (2) The court may, in a residence requirement, require an offender to reside at a hostel or other institution only if the hostel or institution has been recommended as a suitable place for the offender to reside in by an officer of a local authority.

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- (3) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the residence requirement (by virtue of section 227G(2)(b)).
- (4) In this section, “specified”, in relation to a residence requirement, means specified in the requirement.

VALID FROM 01/02/2011

### *Mental health treatment requirement*

#### **227R Mental health treatment requirement**

- (1) In this Act, a “mental health treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both) with a view to improving the offender's mental condition.
- (2) The treatment to which an offender may be required to submit under a mental health treatment requirement is such of the kinds of treatment described in subsection (3) as is specified; but otherwise the nature of the treatment is not to be specified.
- (3) Those kinds of treatment are—
  - (a) treatment as a resident patient in a hospital (other than a State hospital) within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”),
  - (b) treatment as a non-resident patient at such institution or other place as may be specified, or
  - (c) treatment by or under the direction of such registered medical practitioner or registered psychologist as may be specified.
- (4) A court may impose a mental health treatment requirement on an offender only if the court is satisfied—
  - (a) on the written or oral evidence of an approved medical practitioner (within the meaning of the 2003 Act), that Condition A is met,
  - (b) on the written or oral evidence of the registered medical practitioner or registered psychologist by whom or under whose direction the treatment is to be provided, that Condition B is met, and
  - (c) that Condition C is met.
- (5) Condition A is that—
  - (a) the offender suffers from a mental condition,
  - (b) the condition requires, and may be susceptible to, treatment, and
  - (c) the condition is not such as to warrant the offender's being subject to—
    - (i) a compulsory treatment order under section 64 of the 2003 Act, or
    - (ii) a compulsion order under section 57A of this Act.
- (6) Condition B is that the treatment proposed to be specified is appropriate for the offender.

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- (7) Condition C is that arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the hospital proposed to be specified in the requirement.
- (8) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the mental health treatment requirement (by virtue of section 227G(2)(b)).
- (9) In this section, “specified”, in relation to a mental health treatment requirement, means specified in the requirement.

#### **227S Mental health treatment requirements: medical evidence**

- (1) For the purposes of section 227R(4)(a) or (b), a written report purporting to be signed by an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) may be received in evidence without the need for proof of the signature or qualifications of the practitioner.
- (2) Where such a report is lodged in evidence otherwise than by or on behalf of the offender, a copy of the report must be given to—
  - (a) the offender, and
  - (b) the offender's solicitor (if any).
- (3) The court may adjourn the case if it considers it necessary to do so to give the offender further time to consider the report.
- (4) Subsection (5) applies where the offender is—
  - (a) detained in a hospital under this Act, or
  - (b) remanded in custody.
- (5) For the purpose of calling evidence to rebut any evidence contained in a report lodged as mentioned in subsection (2), arrangements may be made by or on behalf of the offender for an examination of the offender by a registered medical practitioner.
- (6) Such an examination is to be carried out in private.

#### **227T Power to change treatment**

- (1) This section applies where—
  - (a) a mental health treatment requirement has been imposed on an offender, and
  - (b) the registered medical practitioner or registered psychologist by whom or under whose direction the offender is receiving the treatment to which the offender is required to submit in pursuance of the requirement is of the opinion mentioned in subsection (2).
- (2) That opinion is—
  - (a) that the offender requires, or that it would be appropriate for the offender to receive, a different kind of treatment (whether in whole or in part) from that which the offender has been receiving, or
  - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different hospital or other institution or place from that where the offender has been receiving treatment.



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- (3) The practitioner or, as the case may be, psychologist may make arrangements for the offender to be treated accordingly.
- (4) Subject to subsection (5), the treatment provided under the arrangements must be of a kind which could have been specified in the mental health treatment requirement.
- (5) The arrangements may provide for the offender to receive treatment (in whole or in part) as a resident patient in an institution or place even though it is one that could not have been specified for that purpose in the mental health treatment requirement.
- (6) Arrangements may be made under subsection (3) only if—
  - (a) the offender and the responsible officer agree to the arrangements,
  - (b) the treatment will be given by or under the direction of a registered medical practitioner or registered psychologist who has agreed to accept the offender as a patient, and
  - (c) where the treatment requires the offender to be a resident patient, the offender will be received as such.
- (7) Where arrangements are made under subsection (3)—
  - (a) the responsible officer must notify the court of the arrangements, and
  - (b) the treatment provided under the arrangements is to be taken to be treatment to which the offender is required to submit under the mental health treatment requirement.

VALID FROM 01/02/2011

### *Drug treatment requirement*

#### **227U Drug treatment requirement**

- (1) In this Act, a “drug treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender's dependency on, or propensity to misuse, drugs.
- (2) The treatment to which an offender may be required to submit under a drug treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).
- (3) Those kinds of treatment are—
  - (a) treatment as a resident in such institution or other place as is specified,
  - (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified.
- (4) The specified person must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.
- (5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the drug treatment requirement (by virtue of section 227G(2)(b)).

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- (6) A court may impose a drug treatment requirement on an offender only if the court is satisfied that—
- (a) the offender is dependent on, or has a propensity to misuse, any controlled drug (as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38)),
  - (b) the dependency or propensity requires, and may be susceptible to, treatment, and
  - (c) arrangements have been, or can be, made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.
- (7) In this section, “specified”, in relation to a drug treatment requirement, means specified in the requirement.

VALID FROM 01/02/2011

### *Alcohol treatment requirement*

#### **227V Alcohol treatment requirement**

- (1) In this Act, an “alcohol treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to the reduction or elimination of the offender's dependency on alcohol.
- (2) The treatment to which an offender may be required to submit under an alcohol treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).
- (3) Those kinds of treatment are—
  - (a) treatment as a resident in such institution or other place as is specified,
  - (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified,
  - (c) treatment by or under the direction of such person as is specified.
- (4) The person specified under subsection (1) or (3)(c) must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.
- (5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the alcohol treatment requirement (by virtue of section 227G(2)(b)).
- (6) A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that—
  - (a) the offender is dependent on alcohol,
  - (b) the dependency requires, and may be susceptible to, treatment, and
  - (c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

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- (7) In this section, “specified”, in relation to an alcohol treatment requirement, means specified in the requirement.

VALID FROM 01/02/2011

*Conduct requirement*

**227W Conduct requirement**

- (1) In this Act, a “conduct requirement” is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.
- (2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—
  - (a) securing or promoting good behaviour by the offender, or
  - (b) preventing further offending by the offender.
- (3) The specified period must be not more than 3 years.
- (4) The specified things must not include anything that—
  - (a) could be required by imposing one of the other requirements listed in section 227A(2), or
  - (b) would be inconsistent with the provisions of this Act relating to such other requirements.
- (5) In this section, “specified”, in relation to a conduct requirement, means specified in the requirement.

VALID FROM 01/02/2011

*Community payback orders: review, variation etc.*

**227X Periodic review of community payback orders**

- (1) On imposing a community payback order on an offender, the court may include in the order provision for the order to be reviewed at such time or times as may be specified in the order.
- (2) A review carried out in pursuance of such provision is referred to in this section as a “progress review”.
- (3) A progress review may be carried out by the court which imposed the community payback order or (if different) the appropriate court, and, where those courts are different, the court must specify in the order which of those courts is to carry out the reviews.
- (4) A progress review is to be carried out in such manner as the court carrying out the review may determine.

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- (5) Before each progress review, the responsible officer must give the court a written report on the offender's compliance with the requirements imposed by the community payback order in the period to which the review relates.
- (6) The offender must attend each progress review.
- (7) If the offender fails to attend a progress review, the court may—
  - (a) issue a citation requiring the offender's attendance, or
  - (b) issue a warrant for the offender's arrest.
- (8) The unified citation provisions apply in relation to a citation under subsection (7)(a) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (9) Subsections (10) and (11) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.
- (10) The court must—
  - (a) provide the offender with written details of the alleged failure,
  - (b) inform the offender that the offender is entitled to be legally represented, and
  - (c) inform the offender that no answer need be given to the allegation before the offender—
    - (i) has been given an opportunity to take legal advice, or
    - (ii) has indicated that the offender does not wish to take legal advice.
- (11) The court must then—
  - (a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZC, or
  - (b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.
- (12) On conclusion of a progress review in respect of a community payback order, the court may vary, revoke or discharge the order in accordance with section 227Z.

#### **227Y Applications to vary, revoke and discharge community payback orders**

- (1) The appropriate court may, on the application of either of the persons mentioned in subsection (2), vary, revoke or discharge a community payback order in accordance with section 227Z.
- (2) Those persons are—
  - (a) the offender on whom the order was imposed,
  - (b) the responsible officer in relation to the offender.

#### **227Z Variation, revocation and discharge: court's powers**

- (1) This section applies where a court is considering varying, revoking or discharging a community payback order imposed on an offender.
- (2) The court may vary, revoke or discharge the order only if satisfied that it is in the interests of justice to do so having regard to circumstances which have arisen since the order was imposed.

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- (3) Subsection (2) does not apply where the court is considering varying the order under section 227ZC(7)(d).
- (4) In varying an order, the court may, in particular—
  - (a) add to the requirements imposed by the order,
  - (b) revoke or discharge any requirement imposed by the order,
  - (c) vary any requirement imposed by the order,
  - (d) include provision for progress reviews under section 227X,
  - (e) where the order already includes such provision, vary that provision.
- (5) In varying a requirement imposed by the order, the court may, in particular—
  - (a) extend or shorten any period or other time limit specified in the requirement,
  - (b) in the case of an unpaid work or other activity requirement, increase or decrease the number of hours specified in the requirement,
  - (c) in the case of a compensation requirement, vary the amount of compensation or any instalment.
- (6) The court may not, under subsection (5)(b), increase the number of hours beyond the appropriate maximum.
- (7) The appropriate maximum is the number of hours specified in section 227I(4)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a “current requirement”).
- (8) In calculating that aggregate, if any current requirement is concurrent with another (by virtue of a direction under section 227N(2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.
- (9) The court may not, under subsection (5)(c), increase the amount of compensation beyond the maximum that could have been awarded at the time the requirement was imposed.
- (10) Where the court varies a restricted movement requirement imposed by a community payback order, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (11) Where the court revokes a community payback order, the court may deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed.
- (12) Subsection (11) applies in relation to a community payback order imposed under section 227M(2) as if the reference to the offence in relation to which the order was imposed were a reference to the failure to pay in respect of which the order was imposed.
- (13) Where the court is considering varying, revoking or discharging the order otherwise than on the application of the offender, the court must issue a citation to the offender requiring the offender to appear before the court (except where the offender is required to appear by section 227X(6)) or 227ZC(2)(b).
- (14) If the offender fails to appear as required by the citation, the court may issue a warrant for the arrest of the offender.

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- (15) The unified citation provisions apply in relation to a citation under subsection (13) as they apply in relation to a citation under section 216(3)(a) of this Act.

#### **227ZA Variation of community payback orders: further provision**

- (1) This section applies where a court is considering varying a community payback order imposed on an offender.
- (2) The court must not make the variation unless it has obtained, and taken account of, a report from the responsible officer containing information about the offender and the offender's circumstances.
- (3) An Act of Adjournment may prescribe—
  - (a) the form of a report under subsection (2), and
  - (b) the particular information to be contained in it.
- (4) Subsection (2) does not apply where the court is considering varying a community payback order—
  - (a) so that it imposes only a level 1 unpaid work or other activity requirement, or
  - (b) imposed under section 227M(2).
- (5) The clerk of the court must give a copy of any report obtained under subsection (2) to—
  - (a) the offender,
  - (b) the offender's solicitor (if any).
- (6) Before making the variation, the court must explain to the offender in ordinary language—
  - (a) the purpose and effect of each of the requirements to be imposed by the order as proposed to be varied,
  - (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order as proposed to be varied, and
  - (c) where the court proposes to include in the order as proposed to be varied provision for a progress review under section 227X, or to vary any such provision already included in the order, the arrangements for such a review.
- (7) The court must not make the variation unless the offender has, after the court has explained those matters, confirmed that the offender—
  - (a) understands those matters, and
  - (b) is willing to comply with each of the requirements to be imposed by the order as proposed to be amended.
- (8) Where the variation would impose a new requirement—
  - (a) the court must not make the variation if the new requirement is not a requirement that could have been imposed by the order when it was imposed,
  - (b) if the new requirement is one which could have been so imposed, the court must, before making the variation take whatever steps the court would have been required to take before imposing the requirement had it been imposed by the order when it was imposed.
- (9) Subsection (8)(a) does not prevent the imposition of a restricted movement requirement under section 227ZC(7)(d).



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- (10) In determining for the purpose of subsection (8)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(7) is to be ignored.
- (11) Where the variation would vary any requirement imposed by the order, the court must not make the variation if the requirement as proposed to be varied could not have been imposed, or imposed in that way, by the order when it was imposed.
- (12) Subsections (4) and (5) of section 227D apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.

#### **227ZB Change of offender's residence to new local authority area**

- (1) The section applies where—
  - (a) the offender on whom a community payback order has been imposed proposes to change, or has changed, residence to a locality (“the new locality”) situated in the area of a different local authority from that in which the locality currently specified in the order is situated, and
  - (b) the court is considering varying the order so as to specify the new local authority area in which the offender resides or will reside.
- (2) The court may vary the order only if satisfied that arrangements have been, or can be, made in the local authority area in which the new locality is situated for the offender to comply with the requirements imposed by the order.
- (3) If the court considers that a requirement (“the requirement concerned”) imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the new local authority area unless it also varies the order so as to—
  - (a) revoke or discharge the requirement concerned, or
  - (b) substitute for the requirement concerned another requirement that can be so complied with.
- (4) Where the court varies the order, the court must also vary the order so as to require the local authority for the area in which the new locality is situated to nominate an officer of the authority to be the responsible officer for the purposes of the order.

VALID FROM 01/02/2011

#### *Breach of community payback order*

#### **227ZC Breach of community payback order**

- (1) This section applies where it appears to the appropriate court that an offender on whom a community payback order has been imposed has failed to comply with a requirement imposed by the order.
- (2) The court may—
  - (a) issue a warrant for the offender's arrest, or



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- (b) issue a citation to the offender requiring the offender to appear before the court.
- (3) If the offender fails to appear as required by a citation issued under subsection (2) (b), the court may issue a warrant for the arrest of the offender.
- (4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (5) The court must, before considering the alleged failure—
  - (a) provide the offender with written details of the alleged failure,
  - (b) inform the offender that the offender is entitled to be legally represented, and
  - (c) inform the offender that no answer need be given to the allegation before the offender—
    - (i) has been given an opportunity to take legal advice, or
    - (ii) has indicated that the offender does not wish to take legal advice.
- (6) Subsection (5) does not apply if the offender has previously been provided with those details and informed about those matters under section 227X(10) of this Act.
- (7) Where the order was imposed under section 227A, if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
  - (a) impose on the offender a fine not exceeding level 3 on the standard scale,
  - (b) where the order was imposed under section 227A(1), revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed,
  - (c) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—
    - (i) where the court is a justice of the peace court, 60 days,
    - (ii) in any other case, 3 months,
  - (d) vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order, or
  - (e) both impose a fine under paragraph (a) and vary the order under paragraph (d).
- (8) Where the order was imposed under section 227M(2), if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
  - (a) revoke the order and impose on the offender a period of imprisonment for a term not exceeding—
    - (i) where the court is a justice of the peace court, 60 days,
    - (ii) in any other case, 3 months, or
  - (b) vary—
    - (i) the number of hours specified in the level 1 unpaid work or other activity requirement imposed by the order, and
    - (ii) where the order also imposes an offender supervision requirement, the specified period under section 227G in relation to the requirement.

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- (9) Where the court revokes a community payback order under subsection (7)(b) or (c) and the offender is, in respect of the same offence, also subject to—
- (a) a drug treatment and testing order, by virtue of section 234J, or
  - (b) a restriction of liberty order, by virtue of section 245D(3),
- the court must, before dealing with the offender under subsection (7)(b) or (c), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.
- (10) If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may, subject to section 227Z(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.
- (11) Subsections (7)(b) and (c) and (9) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).

#### **227ZD Breach of community payback order: further provision**

- (1) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.
- (2) Subsection (3) applies in relation to a community payback order imposing a compensation requirement.
- (3) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.
- (4) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.

VALID FROM 01/02/2011

#### *Restricted movement requirement*

#### **227ZE Restricted movement requirement**

- (1) The requirements which the court may impose under section 227ZC(7)(d) include a restricted movement requirement.
- (2) If the court varies a community payback order under section 227ZC(7)(d) so as to impose a restricted movement requirement, the court must also vary the order so as to impose an offender supervision requirement, unless an offender supervision requirement is already imposed by the order.

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- (3) The court must ensure that the specified period under section 227G in relation to the offender supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes an offender supervision requirement, must vary it accordingly, if necessary.
- (4) The minimum period of 6 months in section 227G(3) does not apply in relation to an offender supervision requirement imposed under subsection (2).
- (5) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (6) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.
- (7) On receiving a report under subsection (6), the responsible officer must report the matter to the court.

#### **227ZF Restricted movement requirement: effect**

- (1) In this Act, a “restricted movement requirement” is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.
- (2) A restricted movement requirement may in particular require the offender—
  - (a) to be in a specified place at a specified time or during specified periods, or
  - (b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.
- (3) In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order, to be at any place for periods totalling more than 12 hours in any one day.
- (4) In subsection (3), “other relevant requirement or order” means—
  - (a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and
  - (b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.
- (5) A restricted movement requirement—
  - (a) takes effect from the specified day, and
  - (b) has effect for such period as is specified.
- (6) The period specified under subsection (5)(b) must be—
  - (a) not less than 14 days, and
  - (b) subject to subsections (7) and (8), not more than 12 months.
- (7) Subsection (8) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—

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- (a) where the offender was under 18 years of age at the time the order was imposed, or
  - (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.
- (8) The period specified under subsection (5)(b) must be not more than—
- (a) where the order was imposed by a justice of the peace court, 60 days, or
  - (b) in any other case, 3 months.
- (9) A court imposing a restricted movement requirement must specify in it—
- (a) the method by which the offender's compliance with the requirement is to be monitored, and
  - (b) the person who is to be responsible for monitoring that compliance.
- (10) The Scottish Ministers may by regulations made by statutory instrument substitute—
- (a) for the number of hours for the time being specified in subsection (3) another number of hours,
  - (b) for the number of months for the time being specified in subsection (6)(b) another number of months.
- (11) Regulations are not to be made under subsection (10) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.
- (12) In this section, “specified”, in relation to a restricted movement requirement, means specified in the requirement.

#### **227ZG Restricted movement requirements: further provision**

- (1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.
- (2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—
  - (a) the place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.
- (3) The court may, before imposing the requirement, hear the officer who prepared the report.

#### **227ZH Variation of restricted movement requirement**

- (1) This section applies where—
  - (a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and
  - (b) the court is considering varying the requirement so as to require the offender to be at a different place (“the new place”).

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- (2) Before making the variation, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—
  - (a) the new place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.
- (3) The court may, before making the variation, hear the officer who prepared the report.

#### **227ZI Remote monitoring**

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

#### **227ZJ Restricted movement requirements: Scottish Ministers' functions**

- (1) The Scottish Ministers may by regulations made by statutory instrument prescribe—
  - (a) which courts, or class or classes of courts, may impose restricted movement requirements,
  - (b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,
  - (c) the class or classes of offender on whom such a requirement may be imposed.
- (2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the “monitor”).
- (5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.
- (6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.
- (7) Subsection (8) applies where—
  - (a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and
  - (b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as changed.
- (8) The appropriate court must—
  - (a) vary the restricted movement requirement so as to specify a different person as the monitor,

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- (b) send a copy of the requirement as varied to that person and to the responsible officer, and
- (c) notify the offender of the variation.

### **227ZK Documentary evidence in proceedings for breach of restricted movement requirement**

- (1) This section applies for the purposes of establishing in any proceedings whether an offender on whom a restricted movement requirement has been imposed has complied with the requirement.
- (2) Evidence of the presence or absence of the offender at a particular place at a particular time may be given by the production of a document or documents bearing to be—
  - (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored, and
  - (b) a certificate signed by a person nominated for the purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the statement.
- (3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.
- (4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.
- (5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.

VALID FROM 01/02/2011

*Local authorities: annual consultation about unpaid work*

### **227ZL Local authorities: annual consultations about unpaid work**

- (1) Each local authority must, for each year, consult prescribed persons about the nature of unpaid work and other activities to be undertaken by offenders residing in the local authority's area on whom community payback orders are imposed.
- (2) In subsection (1), “prescribed persons” means such persons, or class or classes of person, as may be prescribed by the Scottish Ministers by regulations made by statutory instrument.
- (3) A statutory instrument containing regulations under subsection (2) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.



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*Annual reports on community payback orders*

**227ZM Annual reports on community payback orders**

- (1) Each local authority must, as soon as practicable after the end of each reporting year, prepare a report on the operation of community payback orders within their area during that reporting year, and send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers may issue directions to local authorities about the content of their reports under subsection (1); and local authorities must comply with any such directions.
- (3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report that collates and summarises the data included in the various reports under subsection (1).
- (4) In this section, “reporting year” means—
  - (a) the period of 12 months beginning on the day this section comes into force, or
  - (b) any subsequent period of 12 months beginning on an anniversary of that day.

VALID FROM 01/02/2011

*Community payback order: meaning of “the appropriate court”*

**227ZN Meaning of “the appropriate court”**

- (1) In sections 227A to 227ZK, “the appropriate court” means, in relation to a community payback order—
  - (a) where the order was imposed by the High Court of Justiciary, that Court,
  - (b) where the order was imposed by a sheriff, a sheriff having jurisdiction in the locality mentioned in subsection (2),
  - (c) where the order was imposed by a justice of the peace court—
    - (i) the justice of the peace court having jurisdiction in that locality, or
    - (ii) if there is no justice of the peace court having jurisdiction in that locality, a sheriff having such jurisdiction.
- (2) The locality referred to in subsection (1) is the locality for the time being specified in the community payback order under section 227C(2)(a).]

*Probation*

**228 Probation orders.**

- (1) Subject to subsection (2) below [F40 and without prejudice to [F41 sections 234J and 245D] of this Act], where an accused is convicted of an offence (other than an offence



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the sentence for which is fixed by law) the court if it is of the opinion that it is expedient to do so—

- (a) having regard to the circumstances, including the nature of the offence and the character of the offender; and
  - (b) having obtained a report as to the circumstances and character of the offender, may, instead of sentencing him, make an order requiring the offender to be under supervision for a period to be specified in the order of not less than six months nor more than three years; and such an order is, in this Act, referred to as a “probation order”.
- (2) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made—
- (a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or
  - (b) in a case where, by virtue of section 234(1) of this Act, subsections (3) and (4) below would not apply, by the [<sup>F42</sup>local probation board] for the area which contains the petty sessions area which would be named in the order.
- (3) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall—
- (a) name the local authority area in which the offender resides or is to reside; and
  - (b) subject to subsection (4) below, make provision for the offender to be under the supervision of an officer of the local authority of that area.
- (4) Where the offender resides or is to reside in a local authority area in which the court which makes the order has no jurisdiction, the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with Schedule 6 to this Act) in the area of residence or intended residence, and the appropriate court shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.
- (5) Before making a probation order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order, including any additional requirements proposed to be inserted under section 229 or 230 of this Act; and
  - (b) that if he fails to comply with the order or commits another offence during the probation period he will be liable to be sentenced for the original offence, [<sup>F43</sup>or may be dealt with under the powers provided for in section 42(4) of the Criminal Justice (Scotland) Act 2003 (asp 7)(powers of drugs court)]
- and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (6) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall—
- (a) cause copies of the probation order to be given to the officer of the local authority who is to supervise the probationer and to the person in charge of any institution or place in which the probationer is required to reside under the probation order; and
  - (b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the

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[<sup>F44</sup>postal operators] shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

#### Textual Amendments

- F40** Words in s. 228(1) inserted (1.7.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(27)**; S.I. 1997/2323, **art. 5(2)**
- F41** Words in s. 228(1) substituted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 1**; S.I. 1998/2327, **art. 2(1)(s)**
- F42** Words in s. 228(2)(b) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 122**; S.I. 2001/919, **art. 2(f)(ii)**
- F43** Words in s. 228(5)(b) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 42(11)(a)**, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F44** Words in s. 228(6)(b) substituted (26.3.2001) by S.I. 2001/1149, **art. 3(1), Sch. 1 para. 104(4)** (subject to **art. 1(3)**)

#### Modifications etc. (not altering text)

- C19** S. 228(5) modified (*prosp.*) by 2000 c. 19, **ss. 64(9)**, 86(1)(2) (with s. 83(6))

## 229 Probation orders: additional requirements.

- (1) Subject to section 230 of this Act, a probation order may require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers—
- conducive to securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences; or
  - where the probation order is to include such a requirement as is mentioned in subsection (4) or (6) below, conducive to securing or, as the case may be, preventing the matters mentioned in paragraph (a) above.
- (2) Without prejudice to the generality of subsection (1) above, a probation order may, subject to subsection (3) below, include requirements relating to the residence of the offender.
- (3) In relation to a probation order including a requirement such as is mentioned in subsection (2) above—
- before making the order, the court shall consider the home surroundings of the offender; and
  - if the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.
- (4) Without prejudice to the generality of subsection (1) above, where an offender has been convicted of an offence punishable by imprisonment and a court which is considering making a probation order—
- is satisfied that the offender is of or over 16 years of age and that the conditions specified in paragraphs (a) and (c) of section 238(2) of this Act for the making of a community service order have been met;
  - has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when

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the probation order comes into force, to perform unpaid work as a requirement of a probation order; and

- (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the probation order.

- (5) Sections 238 (except subsections (1), (2)(b) and (d) and (4)(b)), 239(1) to (3), and 240 of this Act shall apply, subject to any necessary modifications, to a probation order including a requirement such as is mentioned in subsection (4) above as they apply to a community service order, and in the application of subsection (5) of the said section 238 for the words “subsection (1) above” there shall be substituted the words “ subsection (4) of section 229 of this Act ”.
- (6) Without prejudice to the generality of subsection (1) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of this Act shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—
  - section 249(3) to (5), (8) to (10);
  - section 250(2);
  - section 251(1) and (2)(b);
  - section 253.
- (7) Where the court imposes a requirement to pay compensation under subsection (6) above—
  - (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than 18 months after the making of the order or not later than two months before the end of the period of probation, whichever first occurs;
  - (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
  - (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.

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VALID FROM 08/02/2006

#### **[<sup>F45</sup>229A] Probation progress review**

- (1) A court may, in making a probation order, provide for the order to be reviewed at a hearing held for the purpose by the court.
- (2) The officer responsible for the probationer's supervision is, before the hearing, to make a report in writing to the court on the probationer's progress under the order.
- (3) The probationer must, and that officer may, attend the hearing.
- (4) The hearing may be held whether or not the prosecutor elects to attend.
- (5) Where the probationer fails to attend the hearing the court may issue a warrant for his arrest.
- (6) At the hearing the court, after considering the report made under subsection (2) above, may amend the probation order.
- (7) But before amending the order the court is to explain to the probationer, in ordinary language, the effect of making the amendment; and may proceed to make it only if the probationer expresses his willingness to comply with the requirements of the order as amended.
- (8) Sub-paragraph (2) of paragraph 3 of Schedule 6 to this Act applies to amending under subsection (6) above as that sub-paragraph applies to amending under sub-paragraph (1) of that paragraph.
- (9) At the hearing the court may provide for the order to be reviewed again at a subsequent hearing held for the purpose by the court; and subsections (2) to (8) above and this subsection apply in relation to a review under this subsection as they apply in relation to a review under subsection (1) above.]

#### **Textual Amendments**

- F45** S. 229A inserted (8.2.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), **ss. 12(2), 24**; [S.S.I. 2006/48](#), **art. 3(1)**, [Sch. Pt. 1](#) (subject to art. 3((3)))

#### **230 Probation orders: requirement of treatment for mental condition.**

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 20 <sup>F46</sup> . . . of the <sup>M33</sup>Mental Health (Scotland) Act 1984, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation order, include a requirement that the offender shall submit, for such period, not extending beyond 12 months from the date of the requirement, as may be specified in the order, to treatment by or under the direction of a registered medical practitioner or chartered psychologist with a view to the improvement of the offender's mental condition.

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- (2) The treatment required by virtue of subsection (1) above shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
  - (a) treatment as a resident patient in a hospital within the meaning of the said Act of 1984, not being a State hospital within the meaning of the Act;
  - (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
  - (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist as may be specified in the order,but otherwise the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing a requirement under subsection (1) above unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) Where the registered medical practitioner or chartered psychologist by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of the opinion—
  - (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5) below could have been specified in the probation order; or
  - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,he may, subject to subsection (6) below, make arrangements for the probationer to be treated accordingly.
- (5) Arrangements made under subsection (4) above may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified for that purpose in the probation order.
- (6) Arrangements shall not be made under subsection (4) above unless—
  - (a) the probationer and any officer responsible for his supervision agree;
  - (b) the treatment will be given by or under the direction of a registered medical practitioner or chartered psychologist who has agreed to accept the probationer as his patient; and
  - (c) where such treatment entails the probationer's being a resident patient, he will be received as such.
- (7) Where any such arrangements as are mentioned in subsection (4) above are made for the treatment of a probationer—
  - (a) any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements; and
  - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (8) Subsections (3) to (5) of section 61 of this Act shall apply for the purposes of this section as if for the reference in subsection (3) to section 58(1)(a) of this Act there were substituted a reference to subsection (1) above.

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- (9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

#### Textual Amendments

**F46** Words in s. 230(1) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

#### Marginal Citations

**M33** 1984 c.36.

### [<sup>F47</sup>230A Requirement for remote monitoring in probation order

- (1) Without prejudice to section 245D of this Act, a probation order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the probationer comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.
- (2) The clerk of the court shall cause a copy of a probation order which includes such a requirement to be sent to the person who is to be responsible for monitoring the probationer's compliance with the requirement.
- (3) If, within the period last specified by virtue of subsection (1) above or section 231(1) of this Act, it appears to the person so responsible that the probationer has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 228(3) of this Act, who shall report the matter to the court.
- (4) Section 245H shall apply in relation to proceedings under section 232 of this Act as respects a probation order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.
- (5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a probation order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.
- (6) In relation to a probation order which includes such a requirement—
  - (a) the persons who may make an application under paragraph 3(1) of Schedule 6 to this Act shall include the person responsible for monitoring the probationer's compliance with the requirement, but only in so far as the application relates to the requirement; and
  - (b) a copy of any application under that paragraph by—
    - (i) the probationer or the supervising officer shall be sent by the applicant to the person so responsible; or
    - (ii) the person so responsible shall be sent by the applicant to the probationer and the supervising officer.

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- (7) Where under section 232(2)(c) of, or Schedule 6 to, this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended probation order to be sent—
- (a) to the person so responsible; and
  - (b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.]

#### Textual Amendments

**F47** S. 230A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 46(2)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

### 231 Probation orders: amendment and discharge.

- (1) Schedule 6 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 232 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

### 232 Probation orders: failure to comply with requirement.

- (1) If, on information from—
  - (a) the officer supervising the probationer;
  - (b) the chief social work officer of the local authority whose officer is supervising the probationer; or
  - (c) an officer appointed by the chief social work officer to act on his behalf for the purposes of this subsection,

it appears to the court which made the probation order or to the appropriate court that the probationer has failed to comply with any requirement of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of subsection (1) above that he has failed to comply with a requirement of the probation order, the court may—
  - (a) except in the case of a failure to comply with a requirement to pay compensation and without prejudice to the continuance in force of the probation order, impose a fine not exceeding level 3 on the standard scale; or
  - (b) sentence the offender for the offence for which the order was made; or
  - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order [F48 and any extension to the period of a requirement imposed by virtue of section 230A of this Act shall not increase that period above the maximum mentioned in subsection (1) of that section] ; or
  - (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by sections 238 to 244 of this Act are satisfied,



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make a community service order, and those sections shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.

[<sup>F49</sup>(2A) Subsections (6) and (11) of section 245A of this Act apply to the variation, under paragraph (c) of subsection (2) above, of a requirement such as is mentioned in that paragraph as they apply to the making of a restriction of liberty order.]

(3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.

[<sup>F50</sup>(3A) Where the court intends to sentence an offender under subsection (2)(b) above, and the offender is by virtue of section 245D of this Act subject to

[ a restriction of liberty order; or  
<sup>F51</sup>(a)

(b) a restriction of liberty order and a drug treatment and testing order,]

it shall, before sentencing the offender under that paragraph, revoke the restriction of liberty order [<sup>F52</sup>or, as the case may be, the restriction of liberty order and the drug treatment and testing order.].]

[<sup>F53</sup>(3B) Where the court intends to sentence an offender under subsection (2)(b) above and the offender is by virtue of section 234J of this Act subject to a drug treatment and testing order, it shall, before sentencing the offender under that paragraph, revoke the drug treatment and testing order.]

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

(5) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

(6) Without prejudice to section 233 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

(7) The citation of a probationer to appear before a court of summary jurisdiction in terms of subsection (1) above or section 233(1) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act.

[<sup>F54</sup>(8) This section is subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7)(powers of drugs court).]

#### Textual Amendments

**F48** Words in s. 232(2)(c) added (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 46(3)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

**F49** S. 232(2A) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 46(3)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

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- F50** S. 232(3A) inserted (1.7.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(28)**; S.I. 1997/2323, **art. 5(2)**
- F51** S. 232(3A): sub-paras. (a) and (b) substituted (30.9.1998) for words in s. 232(3A) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 2(2)(a)**; S.I. 1998/2327, **art. 2(1)(s)**
- F52** Words in s. 232(3A) added (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 2(2)(b)**; S.I. 1998/2327, **art. 2(1)(s)**
- F53** S. 232(3B) inserted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 2(3)**; S.I. 1998/2327, **art. 2(1)(s)**
- F54** S. 232(8) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 42(11)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

### 233 Probation orders: commission of further offence.

(1) If it appears to—

- (a) the court which made a probation order; or, as the case may be,
- (b) the appropriate court,

in this section referred to as “the court”, that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act.

(2) Where a probationer is convicted by the court of an offence committed during the probation period, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

(3) Where—

- (a) a court has, under section 229(4) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
- (b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

<sup>F55</sup>(6) The fact that the offence mentioned in subsection (3)(b) above was committed in the circumstances mentioned in subsection (4) above shall, unless challenged—

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- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.]

#### Textual Amendments

**F55** S. 233(6) inserted (1.8.1997) by 1997 c. 48, s. 26(1); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

### 234 Probation orders: persons residing in England and Wales.

- (1) Where the court which made a probation order to which this subsection applies is satisfied that the offender has attained the age of 16 years and resides or will reside in England and Wales, subsections (3) and (4) of section 228 of this Act shall not apply to the order, but—
  - (a) the order shall contain a requirement that he be under the supervision of [<sup>F56</sup>an officer of a local probation board] appointed for or assigned to the petty sessions area in which the offender resides or will reside; and
  - (b) that area shall be named in the order,and where the order includes a requirement that the probationer performs unpaid work for a number of hours, the number specified shall not exceed one hundred.
- (2) Subsection (1) above applies to a probation order which is made under the said section 228 but does not include a requirement which would, if made, correspond to a requirement mentioned in paragraph 2 or 3 of [<sup>F57</sup>Schedule 2 to the 2000 Act], but would, if included in a [<sup>F58</sup>community rehabilitation order made] under that Act, fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be [<sup>F59</sup>3(4)(a)], of that Schedule.
- (3) Where a probation order has been made under the said section 228 and the court in Scotland which made the order or the appropriate court is satisfied—
  - (a) that the probationer has attained the age of 16 years;
  - (b) that he proposes to reside, or is residing, in England and Wales; and
  - (c) that suitable arrangements for his supervision can be made by the [<sup>F60</sup>local probation board] for the area which contains the petty sessions area in which he resides or will reside,the power of that court to amend the order under Schedule 6 to this Act shall include power to insert the provisions required by subsection (1) above or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred, and the court may so amend the order without summoning the probationer and without his consent.
- (4) A probation order made or amended by virtue of this section may, notwithstanding section 230(9) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—
  - (a) subsections (1), (3) and (8) of the said section 230 and paragraph 5(3) of [<sup>F61</sup>Schedule 2 to the 2000 Act] (all of which regulate the making of probation orders [<sup>F62</sup>or, as the case may be, community rehabilitation orders] which include any such requirement) shall apply to the making of an order which

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- includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of the said section 230 and paragraph 5 of the said [F63Schedule 2] respectively; and
- (b) sub-paragraphs (5) to (7) of the said paragraph 5 (functions of supervising officer and registered medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England and Wales in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.
- (5) Sections 231(1) and 232(1) of this Act shall not apply to any order made or amended under this section; but subject to subsection (6) below, [F64Schedule 3 to the 2000 Act] shall apply to the order—
- (a) except in the case mentioned in paragraph (b) below, as if that order were a [F65community rehabilitation order] made under [F66section 41 of that Act]; and
- (b) in the case of an order which contains a requirement such as is mentioned in section 229(4) of this Act, as if it were a [F67community punishment and rehabilitation order] made under [F68section 51 of that Act].
- (6) Part III of [F69Schedule 3 to the 2000 Act] shall not apply as mentioned in subsection (5) above; and [F70sub-paragraphs (4) and (5) of paragraph 4] of that Schedule shall so apply as if for the first reference in the said [F71sub-paragraph (4)] to the Crown Court there were substituted a reference to a court in Scotland and for other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.
- (7) If it appears on information to a justice acting for the petty sessions area named in a probation order made or amended under this section that the person to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order he may issue—
- (a) a summons requiring that person to appear, at the place and time specified in the summons, before the court in Scotland which made the probation order; or
- (b) if the information is in writing and on oath, a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (8) If a warrant for the arrest of a probationer issued under section 233 of this Act by a court is executed in England and Wales and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (9) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the [F72justices' chief executive] for the petty sessions area named in the order, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (10) Where a probation order which is amended under subsection (3) above is an order to which the provisions of this Act apply by virtue of [F73paragraph 6 of Schedule 4 to the 2000 Act] (which relates to [F65community rehabilitation orders] under that Act relating to persons residing in Scotland) then, notwithstanding anything in [F74that Schedule] or this section, the order shall, as from the date of the amendment, have

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effect in all respects as if it were an order made under [<sup>F75</sup>section 41] of that Act in the case of a person residing in England and Wales.

[<sup>F76</sup>(11) In this section “the 2000 Act” means the Powers of Criminal Courts (Sentencing) Act 2000.]

#### Extent Information

**E2** S. 234(4)to(11) extend to G.B.

#### Textual Amendments

- F56** Words in s. 234(1)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 4(1)(a)(2)**; S.I. 2001/919, **art. 2(f)(ii)**
- F57** Words in s. 234(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(2)(a)**
- F58** Words in s. 234(2) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 123(a)**; S.I. 2001/919, **art. 2(f)(ii)**
- F59** Words in s. 234(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(2)(b)**
- F60** Words in s. 234(3)(c) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 123(b)**; S.I. 2001/919, **art. 2(f)(ii)**
- F61** Words in s. 234(4)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(3)(a)**
- F62** Words in s. 234(4)(a) inserted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 123(c)**; S.I. 2001/919, **art. 2(f)(ii)**
- F63** Words in s. 234(4)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(3)(b)**
- F64** Words in s. 234(5) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(4)(a)**
- F65** Words in s. 234(5)(a)(10) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 123(d)(f)**; S.I. 2001/919, **art. 2(f)(ii)**
- F66** Words in s. 234(5)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(4)(b)**
- F67** Words in s. 234(5)(b) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 123(e)**; S.I. 2001/919, **art. 2(f)(ii)**
- F68** Words in s. 234(5)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(4)(c)**
- F69** Words in s. 234(6) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(5)(a)**
- F70** Words in s. 234(6) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(5)(b)**
- F71** Words in s. 234(6) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(5)(c)**
- F72** Words in s. 234(9) substituted (1.4.2001) 1999 c. 22, ss. 90, **Sch. 13 para. 175**; S.I. 2001/916 art. 2(a)(ii)
- F73** Words in s. 234(10) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(6)(a)**
- F74** Words in s. 234(10) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(6)(b)**
- F75** Words in s. 234(10) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(6)(c)**
- F76** S. 234(11) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 176(2)(a)**

#### [<sup>F77</sup> Non-harassment orders]

#### Textual Amendments

**F77** S. 234A and cross-heading inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, **art. 2**

#### 234A [<sup>F78</sup> Non-harassment orders.]

- (1) Where a person is convicted of an offence involving harassment of a person (“the victim”), the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may

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be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.

- (2) On an application under subsection (1) above the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order.
- (3) A non-harassment order made by a criminal court shall be taken to be a sentence for the purposes of any appeal and, for the purposes of this subsection “order” includes any variation or revocation of such an order made under subsection (6) below.
- (4) Any person who is <sup>F79</sup> . . . in breach of a non-harassment order shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both such imprisonment and such fine; and
  - (b) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

[<sup>F80</sup>(4A) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (4) above.

(4B) Subsection (4A) above is without prejudice to any power of arrest conferred by law apart from that subsection.]

<sup>F81</sup>(5) . . . . .

- (6) The person against whom a non-harassment order is made, or the prosecutor at whose instance the order is made, may apply to the court which made the order for its revocation or variation and, in relation to any such application the court concerned may, if it is satisfied on a balance of probabilities that it is appropriate to do so, revoke the order or vary it in such manner as it thinks fit, but not so as to increase the period for which the order is to run.
- (7) For the purposes of this section “harassment” shall be construed in accordance with section 8 of the Protection from Harassment Act 1997.

#### Textual Amendments

**F78** S. 234A inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, art. 2

**F79** Words in s. 234A(4) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 49(1)(a), 89; S.S.I. 2003/288, art. 2, Sch.

**F80** S. 234A(4A)(4B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 49(1)(b), 89; S.S.I. 2003/288, art. 2, Sch.

**F81** S. 234A(5) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(30), Sch. 3; S.I. 1997/1712, art. 3 Sch. (subject to arts. 4, 5)

#### [<sup>F82</sup>234B Drug treatment and testing order.

- (1) This section applies where a person of 16 years of age or more is convicted of an offence, other than one for which the sentence is fixed by law, committed on or after the date on which section 89 of the Crime and Disorder Act 1998 comes into force.



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- (2) Subject to the provisions of this section, the court by or before which the offender is convicted may, if it is of the opinion that it is expedient to do so instead of sentencing him, make an order (a “drug treatment and testing order”) which shall—
- (a) have effect for a period specified in the order of not less than six months nor more than three years (“the treatment and testing period”); and
  - (b) include the requirements and provisions mentioned in section 234C of this Act.
- (3) A court shall not make a drug treatment and testing order unless it—
- (a) has been notified by the Secretary of State that arrangements for implementing such orders are available in the area of the local authority proposed to be specified in the order under section 234C(6) of this Act and the notice has not been withdrawn;
  - (b) has obtained a report by, and if necessary heard evidence from, an officer of the local authority in whose area the offender is resident about the offender and his circumstances; and
  - (c) is satisfied that—
    - (i) the offender is dependent on, or has a propensity to misuse, drugs;
    - (ii) his dependency or propensity is such as requires and is susceptible to treatment; and
    - (iii) he is a suitable person to be subject to such an order.
- (4) For the purpose of determining for the purposes of subsection (3)(c) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify.
- (5) A drug treatment and testing order or an order under subsection (4) above shall not be made unless the offender expresses his willingness to comply with its requirements.
- (6) The Secretary of State may by order—
- (a) amend paragraph (a) of subsection (2) above by substituting a different period for the minimum or the maximum period for the time being specified in that paragraph; and
  - (b) make such transitional provisions as appear to him necessary or expedient in connection with any such amendment.
- (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (8) A drug treatment and testing order shall be as nearly as may be in the form prescribed by Act of Adjournal.]

#### Textual Amendments

**F82** S. 234B inserted (30.9.1998) by 1998 c. 37, s. 89; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

#### [<sup>F83</sup>234C Requirements and provisions of drug treatment and testing orders.

- (1) A drug treatment and testing order shall include a requirement (“the treatment requirement”) that the offender shall submit, during the whole of the treatment and



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testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience (“the treatment provider”) with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.

- (2) The required treatment for any particular period shall be—
  - (a) treatment as a resident in such institution or place as may be specified in the order; or
  - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- (3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident).
- (4) A drug treatment and testing order shall include a requirement (“the testing requirement”) that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times and in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.
- (5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.
- (6) A drug treatment and testing order shall specify the local authority in whose area the offender will reside when the order is in force and require that authority to appoint or assign an officer (a “supervising officer”) for the purposes of subsections (7) and (8) below.
- (7) A drug treatment and testing order shall—
  - (a) provide that, for the treatment and testing period, the offender shall be under the supervision of a supervising officer;
  - (b) require the offender to keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
  - (c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the supervising officer.
- (8) Supervision by the supervising officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—
  - (a) to report on the offender’s progress to the appropriate court;
  - (b) to report to that court any failure by the offender to comply with the requirements of the order; and
  - (c) to determine whether the circumstances are such that he should apply to that court for the variation or revocation of the order.]

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### Textual Amendments

**F83** S. 234C inserted (30.9.1998) by 1998 c. 37, s. 90; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

## 234CA Requirement for remote monitoring in drug treatment and testing order

- (1) A drug treatment and testing order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the offender comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.
- (2) The clerk of the court shall cause a copy of a drug treatment and testing order which includes such a requirement to be sent to the person who is to be responsible for monitoring the offender's compliance with the requirement.
- (3) If, within the period last specified by virtue of subsection (1) above or (6)(d) below, it appears to the person so responsible that the offender has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 234C(6) of this Act, who shall report the matter to the court.
- (4) Section 245H shall apply in relation to proceedings under section 234G of this Act as respects a drug treatment and testing order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.
- (5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a drug treatment and testing order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.
- (6) In relation to a drug testing order which includes such a requirement, section 234E of this Act shall apply with the following modifications—
  - (a) the persons who may make an application under subsection (1) of that section shall include the person responsible for monitoring the offender's compliance with the requirement, but only in so far as the application relates to the requirement;
  - (b) the reference in subsection (2) of that section to the supervising officer shall be construed as a reference to either that officer or the person so responsible;
  - (c) where an application is made under subsection (1) of that section and relates to the requirement, the persons to be heard under subsection (3) of that section shall include the person so responsible;
  - (d) the ways of varying the order which are mentioned in subsection (3)(a) of that section shall include increasing or decreasing the period specified by virtue of subsection (1) above (or last specified by virtue of this paragraph) but not so as to increase that period above the maximum mentioned in subsection (1) above; and
  - (e) the reference in subsection (5) of that section—
    - (i) to the supervising officer shall be construed as a reference to either that officer or the person so responsible; and

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- (ii) to sections 234B(5) and 234D(1) shall be construed as including a reference to section 245A(6) and (11).
- (7) Where under section 234E or 234G(2)(b) of this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended drug treatment and testing order to be sent—
- (a) to the person responsible for monitoring the offender’s compliance with the requirement; and
  - (b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.

**[<sup>F84</sup>234D] Procedural matters relating to drug treatment and testing orders.**

- (1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—
  - (a) the effect of the order and of the requirements proposed to be included in it;
  - (b) the consequences which may follow under section 234G of this Act [<sup>F85</sup>or 42(4) of the Criminal Justice (Scotland) Act 2003 (asp 7)(powers of drugs court)] if he fails to comply with any of those requirements;
  - (c) that the court has power under section 234E of this Act to vary or revoke the order on the application of either the offender or the supervising officer; and
  - (d) that the order will be periodically reviewed at intervals provided for in the order.
- (2) Upon making a drug treatment and testing order the court shall—
  - (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
  - (b) send a copy of the order to the treatment provider;
  - (c) send a copy of the order to the chief social work officer of the local authority specified in the order in accordance with section 234C(6) of this Act; and
  - (d) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
- (3) Where a copy of a drug treatment and testing order has under subsection (2)(a) been sent by registered post or by the recorded delivery service, an acknowledgment or certificate of delivery of a letter containing a copy order issued by the [<sup>F86</sup>postal operator] shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.]

**Textual Amendments**

**F84** S. 234D inserted (30.9.1998) by 1998 c. 37, s. 91; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

**F85** Words in s. 234D(1)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 42(11)(c), 89; S.S.I. 2003/288, art. 2, Sch.

**F86** Words in s. 234D(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 104(5) (subject to art. 1(3))

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**[<sup>F87</sup>234E Amendment of drug treatment and testing order.**

- (1) Where a drug treatment and testing order is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order.
- (2) Where an application is made under subsection (1) above by the supervising officer, the court shall issue a citation requiring the offender to appear before the court.
- (3) On an application made under subsection (1) above and after hearing both the offender and the supervising officer, the court may by order, if it appears to it in the interests of justice to do so—
  - (a) vary the order by—
    - (i) amending or deleting any of its requirements or provisions;
    - (ii) inserting further requirements or provisions; or
    - (iii) subject to subsection (4) below, increasing or decreasing the treatment and testing period; or
  - (b) revoke the order.
- (4) The power conferred by subsection (3)(a)(iii) above shall not be exercised so as to increase the treatment and testing period above the maximum for the time being specified in section 234B(2)(a) of this Act, or to decrease it below the minimum so specified.
- (5) Where the court, on the application of the supervising officer, proposes to vary (otherwise than by deleting a requirement or provision) a drug treatment and testing order, sections 234B(5) and 234D(1) of this Act shall apply to the variation of such an order as they apply to the making of such an order.
- (6) If an offender fails to appear before the court after having been cited in accordance with subsection (2) above, the court may issue a warrant for his arrest.

[ This section is subject to section 234CA(6) of this Act. ]  
<sup>F88</sup>(7)

**Textual Amendments**

**F87** S. 234E inserted (30.9.1998) by 1998 c. 37, s. 92; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

**F88** S. 234E(7) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 47(3), 89; S.S.I. 2003/288, art. 2, Sch.

**[<sup>F89</sup>234F Periodic review of drug treatment and testing order.**

- (1) A drug treatment and testing order shall—
  - (a) provide for the order to be reviewed periodically at intervals of not less than one month;
  - (b) provide for each review of the order to be made, subject to subsection (5) below, at a hearing held for the purpose by the appropriate court (a “review hearing”);
  - (c) require the offender to attend each review hearing;
  - (d) provide for the supervising officer to make to the court, before each review, a report in writing on the offender’s progress under the order; and

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- (e) provide for each such report to include the test results communicated to the supervising officer under section 234C(7)(c) of this Act and the views of the treatment provider as to the treatment and testing of the offender.

<sup>F90</sup>(1A) [ A review hearing may be held whether or not the prosecutor elects to appear.]

- (2) At a review hearing the court, after considering the supervising officer’s report, may amend any requirement or provision of the order.
- (3) The court—
  - (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
  - (b) shall not amend any provision of the order so as reduce the treatment and testing period below the minimum specified in section 234B(2)(a) of this Act or to increase it above the maximum so specified; and
  - (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.
- (4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order.
- (5) If at a review hearing the court, after considering the supervising officer’s report, is of the opinion that the offender’s progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made without a hearing.
- (6) A review without a hearing shall take place in chambers without the parties being present.
- (7) If at a review without a hearing the court, after considering the supervising officer’s report, is of the opinion that the offender’s progress is no longer satisfactory, the court may issue a warrant for the arrest of the offender or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a citation requiring the offender to appear before that court as such time as may be specified in the citation.
- (8) Where an offender fails to attend—
  - (a) a review hearing in accordance with a requirement contained in a drug treatment and testing order; or
  - (b) a court at the time specified in a citation under subsection (7) above, the court may issue a warrant for his arrest.
- (9) Where an offender attends the court at a time specified by a citation issued under subsection (7) above—
  - (a) the court may exercise the powers conferred by this section as if the court were conducting a review hearing; and
  - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.]

#### Textual Amendments

**F89** S. 234F inserted (30.9.1998) by 1998 c. 37, s. 92, S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

**Status:** Point in time view as at 27/06/2003. This version of this part contains provisions that are not valid for this point in time.

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**F90** S. 234F(1A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 64, 89; S.S.I. 2003/288, {art. 2}, Sch.

### [<sup>F91</sup>234GBreach of drug treatment testing order.

- (1) If at any time when a drug treatment and testing order is in force it appears to the appropriate court that the offender has failed to comply with any requirement of the order, the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.
- (2) If it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court may by order—
  - (a) without prejudice to the continuation in force of the order, impose a fine not exceeding level 3 on the standard scale;
  - (b) vary the order [<sup>F92</sup>so however that any extension of the period of a requirement imposed by virtue of section 234CA of this Act shall not increase that period above the maximum mentioned in subsection (1) of that section] ; or
  - (c) revoke the order.

[ Subsections (6) and (11) of section 245A of this Act apply to the variation, under <sup>F93</sup>(2A) paragraph (b) of subsection (2) above, of a requirement imposed as is mentioned in that paragraph as they apply to the making of a restriction of liberty order.]

- (3) For the purposes of subsection (2) above, the evidence of one witness shall be sufficient evidence.
- (4) A fine imposed under this section in respect of a failure to comply with the requirements of a drug treatment and testing order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.]

#### Textual Amendments

- F91** S. 234G inserted (30.9.1998) by 1998 c. 37, s. 93; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F92** Words in s. 234G(2)(b) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 47(4)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F93** S. 234G(2A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 47(4)(b), 89; S.S.I. 2003/288, art. 2, Sch.

### [<sup>F94</sup>234HDisposal on revocation of drugs treatment and testing order.

- (1) Where the court revokes a drugs treatment and testing order under section 234E(3)(b), 234F(4) or 234G(2)(c) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made.
- (2) In disposing of an offender under subsection (1) above, the court shall have regard to the time for which the order has been in operation.
- (3) Where the court revokes a drug treatment and testing order as mentioned in subsection (1) above and the offender is subject to—

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- (a) a probation order, by virtue of section 234J of this Act; or
- (b) a restriction of liberty order, by virtue of section 245D of this Act; or
- (c) a restriction of liberty order and a probation order, by virtue of the said section 245D,

the court shall, before disposing of the offender under subsection (1) above—

- (i) where he is subject to a probation order, discharge that order;
- (ii) where he is subject to a restriction of liberty order, revoke that order; and
- (iii) where he is subject to both such orders, discharge the probation order and revoke the restriction of liberty order.

[ This section is subject to section 42(8) of the Criminal Justice (Scotland) Act 2003<sup>F95</sup>(4) (asp 7)(powers of drugs court).]

#### Textual Amendments

**F94** S. 234H inserted (30.9.1998) by 1998 c. 37, s. 93; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

**F95** S. 234H(4) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 42(1)(d), 89; S.S.I. 2003/288, art. 2, Sch.

#### [<sup>F96</sup>234J Concurrent drug treatment and testing and probation orders.

- (1) Notwithstanding sections 228(1) and 234B(2) of this Act, where the court considers it expedient that the offender should be subject to a drug treatment and testing order and to a probation order, it may make both such orders in respect of the offender.
- (2) In deciding whether it is expedient for it to exercise the power conferred by subsection (1) above, the court shall have regard to the circumstances, including the nature of the offence and the character of the offender and to the report submitted to it under section 234B(3)(b) of this Act.
- (3) Where the court makes both a drug treatment and testing order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each of the orders to the following—
  - (a) the treatment provider within the meaning of section 234C(1);
  - (b) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act; and
  - (c) if he would not otherwise receive a copy of the order, the officer of the local authority who is to supervise the probationer.
- (4) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—
  - (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 234G(2)(b) of this Act in relation to the drug treatment and testing order; and
  - (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) of this Act in relation to the probation order.



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- (5) Where an offender by an act or omission fails to comply with both a requirement contained in a drug treatment and testing order and in a probation order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (4) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 234G(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.]

#### Textual Amendments

**F96** S. 234J inserted "after s. 234H" (30.9.1998) by virtue of 1998 c. 37, s. 94(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

#### [<sup>F97</sup> 234K Drug treatment and testing orders: interpretation.

In sections 234B to 234J of this Act—

“the appropriate court” means—

- (a) where the drug treatment and testing order has been made by the High Court, that court;
- (b) in any other case, the court having jurisdiction in the area of the local authority for the time being specified in the order under section 234C(6) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or district court, but in a case where an order has been made by a district court and there is no district court in that area, the sheriff court; and

“local authority” means a council constituted under section 2 of the <sup>M34</sup>Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted.]

#### Textual Amendments

**F97** S. 234K inserted (30.9.1998) by 1998 c. 37, s. 95(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

#### Marginal Citations

**M34** 1994 c.39.

VALID FROM 28/10/2004

#### [<sup>F98</sup> Antisocial behaviour orders

#### Textual Amendments

**F98** Ss. 234AA, 234AB and cross-heading inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 118, 145(2); S.S.I. 2004/420, art. 3, Sch. 1

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### **234AA Antisocial behaviour orders**

- (1) Where subsection (2) below applies, the court may, instead of or in addition to imposing any sentence which it could impose, make an antisocial behaviour order in respect of a person (the “offender”).
- (2) This subsection applies where—
  - (a) the offender is convicted of an offence;
  - (b) at the time when he committed the offence, the offender was at least 12 years of age;
  - (c) in committing the offence, he engaged in antisocial behaviour; and
  - (d) the court is satisfied, on a balance of probabilities, that the making of an antisocial behaviour order is necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—
  - (a) acts in a manner that causes or is likely to cause alarm or distress; or
  - (b) pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as him.
- (4) Subject to subsection (5) below, an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the offender from doing anything described in the order.
- (5) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (6) Before making an antisocial behaviour order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order and the prohibitions proposed to be included in it;
  - (b) the consequences of failing to comply with the order;
  - (c) the powers the court has under subsection (8) below; and
  - (d) the entitlement of the offender to appeal against the making of the order.
- (7) Failure to comply with subsection (6) shall not affect the validity of the order.
- (8) On the application of the offender in respect of whom an antisocial behaviour order is made under this section, the court which made the order may, if satisfied on a balance of probabilities that it is appropriate to do so—
  - (a) revoke the order; or
  - (b) subject to subsection (9) below, vary it in such manner as it thinks fit.
- (9) Where an antisocial behaviour order specifies a period, the court may not, under subsection (8)(b) above, vary the order by extending the period.
- (10) An antisocial behaviour order made under this section, and any revocation or variation of such an order under subsection (8) above, shall be taken to be a sentence for the purposes of an appeal.
- (11) Sections 9 and 11 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (which provide that breach of an antisocial behaviour order made under that Act is an offence for which a person is liable to be arrested without warrant) shall apply in relation to

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antisocial behaviour orders made under this section as those sections apply in relation to antisocial behaviour orders made under section 4 of that Act.

- (12) In this section, “conduct” includes speech; and a course of conduct must involve conduct on at least two occasions.

#### **234AB Antisocial behaviour orders: notification**

- (1) Upon making an antisocial behaviour order under section 234AA of this Act, the court shall—
- (a) serve a copy of the order on the offender; and
  - (b) give a copy of the order to the local authority it considers most appropriate.
- (2) Upon revoking an antisocial behaviour order under subsection (8)(a) of that section, the court shall notify the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (3) Upon varying an antisocial behaviour order under subsection (8)(b) of that section, the court shall—
- (a) serve a copy of the order as varied on the offender; and
  - (b) give a copy of the order as varied to the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (4) For the purposes of this section, a copy is served on an offender if—
- (a) given to him; or
  - (b) sent to him by registered post or the recorded delivery service.
- (5) A certificate of posting of a letter sent under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate.
- (6) In this section, “offender” means the person in respect of whom the antisocial behaviour order was made.]

### *Supervised attendance*

#### **235 Supervised attendance orders.**

- (1) A court may make a supervised attendance order in the circumstances specified in subsection (3) below and shall, subject to paragraph 1 of Schedule 7 to this Act, make such an order where subsection (4) below applies.
- (2) A supervised attendance order is an order made by a court in respect of an offender requiring him—
- (a) to attend a place of supervision for such period, being a period of not less than 10 hours and not more than—
    - (i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and
    - (ii) in any other case, 100 hours, as is specified in the order; and
  - (b) during that period, to carry out such instructions as may be given to him by the supervising officer.

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- (3) The circumstances referred to in subsection (1) above are where—
- (a) the offender is of or over [<sup>F99</sup>16] years of age; and
  - (b) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would also have imposed on him a period of imprisonment under subsection (1) of section 219 of this Act; and
  - (c) the court considers a supervised attendance order more appropriate than the serving of or, as the case may be, imposition of such a period of imprisonment.
- (4) This subsection applies where—
- (a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;
  - (b) the offender is of or over [<sup>F100</sup>16] years of age and is not serving a sentence of imprisonment;
  - (c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 219(1)(b) of this Act; and
  - (d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.
- (5) An order under subsection (4)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (4)(c) above or, as the case may be, section 236(3)(a) or 237(1) of this Act.
- (7) Schedule 7 to this Act has effect for the purpose of making further and qualifying provision as to supervised attendance orders.
- (8) In this section—
- “imprisonment” includes detention;
- “place of supervision” means such place as may be determined for the purposes of a supervised attendance order by the supervising officer; and
- “supervising officer”, in relation to a supervised attendance order, means a person appointed or assigned under Schedule 7 to this Act by the local authority whose area includes the locality in which the offender resides or will be residing when the order comes into force.

#### Textual Amendments

**F99** Word in s. 235(3)(a) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 50\(1\)\(a\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

**F100** Word in s. 235(4)(b) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 50\(1\)\(b\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

#### Modifications etc. (not altering text)

**C20** S. 235(3)(b) extended (1.4.1996) by [1995 c. 40, ss. 4, 7\(2\)](#), [Sch. 3 Pt. II para. 13\(1\)](#)

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### 236 Supervised attendance orders in place of fines for 16 and 17 year olds.

- (1) This section applies where a person of [<sup>F101</sup>or over 16] years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.
- (2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.
- (3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—
  - (a) impose the fine; and
  - (b) subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in default of payment of the fine within 28 days.
- (4) A supervised attendance order made under subsection (3)(b) above—
  - (a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;
  - (b) shall, for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.
- (5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall
  - [<sup>F102</sup>(a) if it considers that the person is likely to pay the fine within a reasonable period of more than 28 days, impose the fine;
  - (b) in any other case],subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in respect of that person.
- (7) Sections 211(3), 213, 214(1) to (7), 215, 216(1) to (6), 217 to 219, 222 and 223 of this Act shall not apply in respect of a person to whom this section applies.
- (8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.
- (9) In this section “supervised attendance order” means an order made in accordance with section 235(2), (7) and (8) of this Act.

#### Textual Amendments

**F101** Words in s. 236(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(2)(a), 89; S.S.I. 2003/288, art. 2, Sch.

**F102** S. 236(6)(a)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(2)(b), 89; S.S.I. 2003/288, art. 2, Sch.

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### **237 Supervised attendance orders where court allows further time to pay fine.**

- (1) Where a court, on an application to it under section 215(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 7 to this Act, impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.
- (2) A supervised attendance order made under subsection (1) above shall—
  - (a) if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and
  - (b) for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.
- (3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (4) In this section “supervised attendance order” means an order made in accordance with section 235(2), (7) and (8) of this Act.

#### *Community service by offenders*

### **238 Community service orders.**

- (1) Subject to the provisions of this Act, where a person of or over 16 years of age is convicted of an offence punishable by imprisonment, other than an offence the sentence for which is fixed by law, the court may, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention, make an order (in this Act referred to as “a community service order”) requiring him to perform unpaid work for such number of hours (being in total not less than <sup>F103</sup>80 nor more than 300 on conviction on indictment, and not less than 80 nor more than 240 in any other case) as may be specified in the order.
- (2) A court shall not make a community service order in respect of any offender unless—
  - (a) the offender consents;
  - (b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to perform work under such an order;
  - (c) the court is satisfied, after considering a report by an officer of a local authority about the offender and his circumstances, and, if the court thinks it necessary, hearing that officer, that the offender is a suitable person to perform work under such an order; and
  - (d) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform work under such an order.
- (3) A copy of the report mentioned in subsection (2)(c) above shall be supplied to the offender or his solicitor.

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- (4) Before making a community service order the court shall explain to the offender in ordinary language—
  - (a) the purpose and effect of the order and in particular the obligations on the offender as specified in subsections (1) to (3) of section 239 of this Act;
  - (b) the consequences which may follow under subsections (4) to (6) of that section if he fails to comply with any of those requirements; and
  - (c) that the court has under section 240 of this Act the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.
- (5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum or minimum number of hours specified in that subsection as originally enacted or as subsequently amended under this subsection, such number of hours as may be specified in the order; and an order under this subsection may specify a different maximum or minimum number of hours for different classes of case.
- (6) An order under subsection (5) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament; and any such order may be varied or revoked by a subsequent order under that subsection.
- (7) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service in respect of any offence from—
  - (a) imposing any disqualification on the offender;
  - (b) making an order for forfeiture in respect of the offence;
  - (c) ordering the offender to find caution for good behaviour.
- (8) A community service order shall—
  - (a) specify the locality in which the offender resides or will be residing when the order comes into force;
  - (b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer (referred to in this section and sections 239 to 245 of this Act as “the local authority officer”) who will discharge the functions assigned to him by those sections; and
  - (c) state the number of hours of work which the offender is required to perform.
- (9) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one community service order, or to both a community service order and a probation order which includes a requirement that that offender shall perform any unpaid work, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number of hours of work to perform in excess of the maximum provided for in subsection (1) above.
- (10) Upon making a community service order the court shall—
  - (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
  - (b) send a copy of the order to the chief social work officer of the local authority in whose area the offender resides or will be residing when the order comes into force; and



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- (c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
- (11) Where a copy of a community service order has, under subsection (10)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by [F104 postal operator] the shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

#### Textual Amendments

**F103** Words in s. 238(1) substituted (18.7.1996) by S.I. 1996/1938, art. 3

**F104** Words in s. 238(11) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 104(6) (subject to art. 1(3))

### 239 Community service orders: requirements.

- (1) An offender in respect of whom a community service order is in force shall—
- (a) report to the local authority officer and notify him without delay of any change of address or in the times, if any, at which he usually works; and
  - (b) perform for the number of hours specified in the order such work at such times as the local authority officer may instruct.
- (2) Subject to section 240(1) of this Act, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.
- (3) The instructions given by the local authority officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.
- (4) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on information from the local authority officer, that that offender has failed to comply with any of the requirements of subsections (1) to (3) above (including any failure satisfactorily to perform the work which he has been instructed to do), that court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring that offender to appear before that court at such time as may be specified in the citation.
- (5) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (4) above that he has failed without reasonable excuse to comply with any of the requirements of the said subsections (1) to (3), that court may—
- (a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding level 3 on the standard scale;
  - (b) revoke the order and deal with that offender in any manner in which he could have been dealt with for the original offence by the court which made the order if the order had not been made; or

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- (c) subject to section 238(1) of this Act, vary the number of hours specified in the order.
- (6) The evidence of one witness shall, for the purposes of subsection (5) above, be sufficient evidence.

#### **240 Community service orders: amendment and revocation etc.**

- (1) Where a community service order is in force in respect of any offender and, on the application of that offender or of the local authority officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, that court may—
  - (a) extend, in relation to the order, the period of 12 months specified in section 239(2) of this Act;
  - (b) subject to section 238(1) of this Act, vary the number of hours specified in the order;
  - (c) revoke the order; or
  - (d) revoke the order and deal with the offender for the original offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (2) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under section 238(8)(a) of this Act to another locality and—
  - (a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to perform work under community service orders; and
  - (b) it appears to that court that provision can be made under those arrangements for him to perform work under the order,that court may, and on the application of the local authority officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and sections 238 to 245 of this Act shall apply to the order as amended.
- (3) Where the court proposes to exercise its powers under subsection (1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.

#### **241 Community service order: commission of offence while order in force.**

- (1) Where—
  - (a) a court has made a community service order in respect of an offender; and
  - (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.
- (2) The circumstances referred to in subsection (1) above are that the offence was committed—
  - (a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and

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- (b) in any place where unpaid work under the order was being or had previously been performed.
- (3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is labelled in the indictment or, as the case may be, specified in the complaint.
- [<sup>F105</sup>(4) The fact that the offence mentioned in subsection (1)(b) above was committed in the circumstances mentioned in subsection (2) above shall, unless challenged—
  - (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
  - (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.]

#### Textual Amendments

**F105** S. 241(4) inserted (1.8.1997) by 1997 c. 48, s. 26(2); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

## 242 Community service orders: persons residing in England and Wales.

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender has attained the age of 16 years and resides, or will be residing when the order comes into force, in England or Wales, then—
  - (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—
    - (i) paragraph (b) shall be omitted;
    - (ii) in paragraph (c) for the words “such an order” there shall be substituted the words “a [<sup>F106</sup>community punishment order]”; and
    - (iii) for paragraph (d) there shall be substituted the following paragraph—
      - “(d) it appears to that court that provision can be made for the offender to perform work under the order made under subsection (1) above under the arrangements which exist in the petty sessions area in which he resides or will be residing for persons to perform work under [<sup>F106</sup>community punishment orders] made under [<sup>F107</sup>section 46 of the Powers of Criminal Courts (Sentencing) Act 2000];”; and
  - (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in section 238(2) (d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—
  - (a) the appropriate court is satisfied that the offender has attained the age of 16 years and proposes to reside or is residing in England or Wales; and
  - (b) it appears to that court that provision can be made for the offender to perform work under the order made under the arrangements which exist in the petty sessions area in which he proposes to reside or is residing for persons to perform work under [<sup>F106</sup>community punishment orders] made under [<sup>F108</sup>section 46 of the Powers of Criminal Courts (Sentencing) Act 2000],

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it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in paragraph (b) of this subsection.

- (3) A community service order made under section 238(1) as amended by or in accordance with this section shall—
- (a) specify the petty sessions area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and
  - (b) require the [<sup>F109</sup>local probation board] for that area to appoint or assign [<sup>F110</sup>an officer of the board] who will discharge in respect of the order the functions in respect of [<sup>F106</sup>community punishment orders] conferred on [<sup>F111</sup>responsible officers by the Powers of Criminal Courts (Sentencing) Act 2000].

#### Textual Amendments

**F106** Words in s. 242(1)(a)(ii)(iii)(2)(b)(3)(b) substituted (1.4.2001) by 2000 c. 43, ss. 74, **Sch. 7 para. 124(a)(b)**; S.I. 2001/919, **art. 2(f)(ii)**

**F107** Words in s. 242(1)(a)(iii) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 177(2)**

**F108** Words in s. 242(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 177(3)**

**F109** Words in s. 242(3)(b) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 124(c)(i)**; S.I. 2001/919 art. 2(f)(ii)

**F110** Words in s. 242(3)(b) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 124(c)(ii)**; S.I. 2001/919, **art. 2(f)(ii)**

**F111** Words in s. 242(3) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 177(4)**

### 243 Community service orders: persons residing in Northern Ireland.

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender resides, or will be residing when the order comes into force, in Northern Ireland, then—
- (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—
    - (i) paragraph (b) shall be omitted;
    - (ii) for paragraph (d) there shall be substituted the following paragraph—

“(d) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under such an order;”;
  - (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in section 238(2)(d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—
- (a) the appropriate court is satisfied that the offender proposes to reside or is residing in Northern Ireland; and
  - (b) it appears to that court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,

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it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in paragraph (b) of this subsection.

- (3) A community service order made under section 238(1) of this Act as amended by or in accordance with this section shall—
- (a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or the amendment comes into force; and
  - (b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by the <sup>M35</sup>Treatment of Offenders (Northern Ireland) Order 1976.

#### Marginal Citations

M35 S.I. 1976 No.226 (N.I. 4)

## 244 Community service orders: general provisions relating to persons living in England and Wales or Northern Ireland.

- (1) Where a community service order is made or amended in the circumstances specified in section 242 or 243 of this Act, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.
- (2) In this section—
- “home court” means—
- (a) if the offender resides in England or Wales, or will be residing in England or Wales at the relevant time, the magistrates’ court acting for the petty sessions area in which he resides or proposes to reside; and
  - (b) if he resides in Northern Ireland, or will be residing in Northern Ireland, at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside; and
- “the relevant time” means the time when the order or the amendment to it comes into force.
- [<sup>F112</sup>(3) Subject to the following provisions of this section—
- (a) a community service order made or amended in the circumstances specified in section 242 shall be treated as if it were a community punishment order made in England and Wales and the legislation relating to community punishment orders which has effect in England and Wales shall apply accordingly; and
  - (b) a community service order made or amended in the circumstances specified in section 243 shall be treated as if it were a community service order made in Northern Ireland and the legislation relating to community service orders which has effect in Northern Ireland shall apply accordingly.]
- (4) Before making or amending a community service order in those circumstances the court shall explain to the offender in ordinary language—

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- (a) the requirements of the legislation relating to community service orders [<sup>F113</sup>or, as the case may be, community punishment orders] which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;
  - (b) the powers of the home court under that legislation, as modified by this section; and
  - (c) its own powers under this section,
- and an explanation given in accordance with this section shall be sufficient without the addition of an explanation under section 238(4) of this Act.
- (5) The home court may exercise in relation to the community service order any power which it could exercise in relation to a community service order [<sup>F113</sup>or, as the case may be, a community punishment order] made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part of the United Kingdom, except—
- (a) a power to vary the order by substituting for the number of hours' work specified in it any greater number than the court which made the order could have specified;
  - (b) a power to revoke the order; and
  - (c) a power to revoke the order and deal with the offender for the offence in respect of which it was made in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (6) If at any time while legislation relating to community service orders [<sup>F113</sup>or, as the case may be, community punishment orders] which has effect in one part of the United Kingdom applies by virtue of subsection (3) above to a community service order made in another part—
- (a) it appears to the home court—
    - (i) if that court is in England or Wales, on information to a justice of the peace acting for the petty sessions area for the time being specified in the order; or
    - (ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,that the offender has failed to comply with any of the requirements of the legislation applicable to the order; or
  - (b) it appears to the home court on the application of—
    - (i) the offender; or
    - (ii) if that court is in England and Wales, the [<sup>F114</sup>responsible officer under the Powers of Criminal Courts (Sentencing) Act 2000]; or
    - (iii) if that court is in Northern Ireland, the relevant officer under the <sup>M36</sup>Treatment of Offenders (Northern Ireland) Order 1976,that it would be in the interests of justice to exercise a power mentioned in subsection (5)(b) or (c) above,
- the home court may require the offender to appear before the court by which the order was made.
- (7) Where an offender is required by virtue of subsection (6) above to appear before the court which made a community service order, that court—

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- (a) may issue a warrant for his arrest; and
  - (b) may exercise any power which it could exercise in respect of the community service order if the offender resided in the part of the United Kingdom where the court has jurisdiction,
- and any enactment relating to the exercise of such powers shall have effect accordingly.

#### Textual Amendments

- F112** S. 244(3)(a)(b) substituted for s. 244(3) (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 125(a)**; S.I. 2001/919 art. 2(f)(ii)
- F113** Words in s. 244(4)(a)(5)(6) inserted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 125(b)(c)**; S.I. 2001/919, **art. 2(f)(ii)**
- F114** Words in s. 244(6)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 178**

#### Marginal Citations

- M36** S.I. 1976 No.226 (N.I. 4)

## 245 Community service orders: rules, annual report and interpretation.

- (1) The Secretary of State may make rules for regulating the performance of work under community service orders or probation orders which include a requirement that the offender shall perform unpaid work.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
  - (a) limit the number of hours' work to be done by a person under such an order on any one day;
  - (b) make provision as to the reckoning of time worked under such orders;
  - (c) make provision for the payment of travelling and other expenses in connection with the performance of work under such orders;
  - (d) provide for records to be kept of the work done by any person under such an order.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the working of community service orders.
- (5) In sections 238 to 243 of this Act, “the appropriate court” means—
  - (a) where the relevant community service order has been made by the High Court, the High Court;
  - (b) in any other case, the court having jurisdiction in the locality for the time being specified in the order under section 238(8)(a) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court.



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## *[<sup>F115</sup>Restriction of liberty orders]*

### **Textual Amendments**

**F115** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

### **[<sup>F116</sup>245A] Restriction of liberty orders.**

- (1) Without prejudice to section 245D of this Act, where a person of 16 years of age or more is convicted of an offence [<sup>F117</sup>punishable by imprisonment] (other than an offence the sentence for which is fixed by law) the court, <sup>F118</sup>. . . may [<sup>F119</sup>, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention,] make an order under this section (in this Act referred to as a “restriction of liberty order”) in respect of him; and in this section and sections 245B to 245I of this Act any reference to an “offender” is a reference to a person in respect of whom an order has been made under this subsection.
- (2) A restriction of liberty order may restrict the offender’s movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—
  - (a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;
  - (b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified, but the court may not, under paragraph (a) above, require the offender to be in any place or places for a period or periods totalling more than 12 hours in any one day.
- (3) A restriction of liberty order may be made for any period up to 12 months.
- (4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order, including any requirements which are to be included in the order under section 245C of this Act;
  - (b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and
  - (c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,and the court shall not make the order unless the offender agrees to comply with its requirements.
- (5) The clerk of the court by which a restriction of liberty order is made shall—
  - (a) cause a copy of the order to be sent—
    - [ to any person who is to be responsible for monitoring the offender’s
    - <sup>F120</sup>(i)] compliance with the order; [<sup>F121</sup>and
    - (ii) if the offender resides (or is to reside) in a place outwith the jurisdiction of the court making the order, to the clerk of a court within whose jurisdiction that place is;] and
  - (b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment or certificate

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of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgment or certificate.

- (6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall obtain and consider information about that place or those places, including information as to the attitude of persons likely to be affected by the enforced presence there of the offender.
- (7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.
- (8) The Secretary of State may by regulations prescribe—
  - (a) which courts, or class or classes of courts, may make restriction of liberty orders;
  - (b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
  - (c) the class or classes of offenders in respect of which restriction of liberty orders may be made,and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.
- (9) Without prejudice to the generality of subsection (8) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.
- (10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.
- (11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.
- (12) The Secretary of State may by regulations substitute for the period of—
  - (a) hours for the time being mentioned in subsection (2) above; or
  - (b) months for the time being mentioned in subsection (3) above,such period of hours or, as the case may be, months as may be prescribed in the regulations.
- (13) Regulations under this section shall be made by statutory instrument.
- (14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.]

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#### Textual Amendments

- F116** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1
- F117** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F118** Words in s. 245A(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(b), 89; S.S.I. 2003/288, art. 2, Sch.
- F119** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(c), 89; S.S.I. 2003/288, art. 2, Sch.
- F120** Words in s. 245A(5)(a) renumbered as s. 245A(5)(a)(i) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(2)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F121** S. 245A(5)(a)(ii) and preceding word inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(2)(b), 89; S.S.I. 2003/288, art. 2, Sch.

#### [<sup>F122</sup>245B Monitoring of restriction of liberty orders.

- (1) Where the Secretary of State, in regulations made under section 245A(8) of this Act, empowers a court or a class of court to make restriction of liberty orders he shall notify the court or each of the courts concerned of the person or class or description of persons who may be designated by that court for the purpose of monitoring an offender's compliance with any such order.
- (2) A court which makes a restriction of liberty order in respect of an offender shall include provision in the order for making a person notified by the Secretary of State under subsection (1) above, or a class or description of persons so notified, responsible for the monitoring of the offender's compliance with it.
- (3) Where the Secretary of State changes the person or class or description of persons notified by him under subsection (1) above, any court which has made a restriction of liberty order shall, if necessary, vary the order accordingly and shall notify the variation to the offender.]

#### Textual Amendments

- F122** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

#### [<sup>F123</sup>245C Remote monitoring.

- (1) The Secretary of State may make such arrangements, including contractual arrangements, as he considers appropriate with such persons, whether legal or natural, as he thinks fit for the remote monitoring of the compliance of offenders with restriction of liberty orders, and different arrangements may be made in relation to different areas or different forms of remote monitoring.
- (2) A court making a restriction of liberty order which is to be monitored remotely may include in the order a requirement that the offender shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the order to be carried out.

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- (3) The Secretary of State shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order.
- (4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F123** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

#### Modifications etc. (not altering text)

**C21** S. 245C applied (12.1.2004) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 40(7), 89; S.S.I. 2003/475, art. 2, Sch.

**C22** S. 245C(1)(3) modified (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 11 para. 23**  
S. 245C(1)(3) modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, art. 2(1), Sch. 1

**C23** S. 245C(1)(3) modified (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 11 para. 23**  
S. 245C(1)(3) modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, art. 2(1), Sch. 1

#### [<sup>F124</sup>245DCombination of restriction of liberty order with other orders.

- (1) Subsection (3) applies where the court—
  - (a) intends to make a restriction of liberty order under section 245A(1) of this Act; and
  - (b) considers it expedient that the offender should also be subject to a probation order made under section 228(1) of this Act or to a drug treatment and testing order made under section 234B(2) of this Act or to both such orders.
- (2) In deciding whether it is expedient to make a probation order or a drug treatment and testing order by virtue of paragraph (b) of subsection (1) above, the court shall—
  - (a) have regard to the circumstances, including the nature of the offence and the character of the offender; and
  - (b) obtain a report as to the circumstances and character of the offender.
- (3) Where this subsection applies, the court, notwithstanding sections 228(1), 234B(2) and 245A(1) of this Act, may make a restriction of liberty order and either or both of a probation order and a drug treatment and testing order.
- (4) Where the court makes a restriction of liberty order and a probation order by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
  - (a) any person responsible for monitoring the offender's compliance with the restriction of liberty order; and
  - (b) the officer of the local authority who is to supervise the probationer.
- (5) Where the court makes a restriction of liberty order and a drug treatment and testing order by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
  - (a) any person responsible for monitoring the offender's compliance with the restriction of liberty order;

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- (b) the treatment provider, within the meaning of section 234C(1) of this Act; and
  - (c) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act.
- (6) Where the court makes a restriction of liberty order, a probation order and a drug treatment and testing order the clerk of the court shall send copies of each of the orders to the persons mentioned—
- (a) in subsection (4) above;
  - (b) in paragraph (b) of subsection (5) above; and
  - (c) in paragraph (c) of that subsection, if that person would not otherwise receive such copies.
- (7) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (3) above—
- (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the powers conferred by section 234G(2)(b) of this Act in relation to a drug treatment and testing order to which the offender is subject by virtue of subsection (3) above and by section 245F(2) of this Act in relation to the restriction of liberty order;
  - (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the powers conferred by section 232(2)(c) of this Act in relation to a probation order to which the offender is subject by virtue of subsection (3) above and by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and
  - (c) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the powers conferred by section 232(2)(c) of this Act in relation to a probation order and by section 234G(2)(b) of this Act in relation to a drug treatment and testing order to which, in either case, the offender is subject by virtue of subsection (3) above.
- (8) In any case to which this subsection applies, the offender may, without prejudice to subsection (7) above, be dealt with as respects that case under section 232(2) or, as the case may be, section 234G or section 245F(2) of this Act but he shall not be liable to be otherwise dealt with as respects that case.
- (9) Subsection (8) applies in a case where—
- (a) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a probation order to which he is subject by virtue of subsection (3) above;
  - (b) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a drug treatment and testing order to which he is subject by virtue of subsection (3) above;
  - (c) the offender by an act or omission fails to comply with a requirement contained in each of a restriction of liberty order, a probation order and a drug treatment and testing order to which he is subject by virtue of subsection (3) above.]

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### Textual Amendments

**F124** S. 245D substituted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 3**; S.I. 1998/2327, **art. 2(1)(s)**

### [<sup>F125</sup>245E] Variation of restriction of liberty order.

- (1) Where a restriction of liberty order is in force either the offender or any person responsible for monitoring his compliance with the order may
  - [<sup>F127</sup> except in a case to which paragraph (b) below applies,] apply to the court [<sup>F126</sup>(a)] which made the order [<sup>F128</sup> or]
  - [<sup>F129</sup>(b)] where a copy of the order was, under section 245A(5)(a)(ii) of this Act or subsection (7)(a) below, sent to the clerk of a different court, to that different court (or, if there has been more than one such sending, the different court to which such a copy has most recently been so sent,)]  
for a review of it
- (2) On an application made under subsection (1) above, and after hearing both the offender and any person responsible for monitoring his compliance with the order, the court may by order, if it appears to it to be in the interests of justice to do so—
  - (a) vary the order by—
    - (i) amending or deleting any of its requirements;
    - (ii) inserting further requirements; or
    - (iii) subject to subsection (3) of section 245A of this Act, increasing the period for which the order has to run; or
  - (b) revoke the order.
- (3) Where the court, on the application of a person other than the offender, proposes to—
  - (a) exercise the power conferred by paragraph (a) of subsection (2) above to vary (otherwise than by deleting a requirement) a restriction of liberty order, it shall issue a citation requiring the offender to appear before the court and section 245A(4) shall apply to the variation of such an order as it applies to the making of an order; and
  - (b) exercise the power conferred by subsection (2)(b) above to revoke such an order and deal with the offender under section 245G of this Act, it shall issue a citation requiring him to appear before the court.
- (4) If an offender fails to appear before the court after having been cited in accordance with subsection (3) above, the court may issue a warrant for his arrest.
- [ Where a reason for an application by the offender under subsection (1) above is that [<sup>F130</sup>(5) he proposes to reside in a place outwith the jurisdiction of the court to which that application is made, and the court is satisfied that suitable arrangements can be made, in the district where that place is, for monitoring his compliance with the order it may—
  - (a) vary the order to permit or make practicable such arrangements; and
  - (b) where the change in residence necessitates or makes desirable a change in who is designated for the purpose of such monitoring, vary the order accordingly.
- (6) Before varying a restriction of liberty order for the reason mentioned in subsection (5) above, the court shall—

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- (a) if the order will require the offender to remain in a specified place or in specified places, obtain and consider information about that place, or those places, including information as to the attitude of persons likely to be affected by any enforced presence there of the offender; and
  - (b) satisfy itself that his compliance with that requirement can be monitored by the means of monitoring specified, or which it intends to specify, in the order.
- (7) Where a restriction of liberty order is varied as is mentioned in subsection (5) above, the clerk of the court shall send a copy of the order as so varied to—
- (a) the clerk of a court within whose jurisdiction the place of proposed residence is;
  - (b) the person who, immediately before the order was varied, was responsible for monitoring the person’s compliance with it; and
  - (c) the person who, in consequence of the variation, is to have that responsibility.
- (8) If, in relation to an application made for such reason as is mentioned in subsection (5) above, the court is not satisfied as is mentioned in that subsection, it may—
- (a) refuse the application; or
  - (b) revoke the order.]]

#### Textual Amendments

**F125** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

**F126** Words in s. 245E(1) renumbered as s. 245E(1)(a) (27.6.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(3)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.

**F127** Words in s. 245E(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(3)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.

**F128** Word in s. 245E(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(3)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.

**F129** S. 245E(1)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(3)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.

**F130** S. 245E(5)-(8) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(3)(b), 89; S.S.I. 2003/288, art. 2, Sch.

#### [<sup>F131</sup>245FBreach of restriction of liberty order.

- (1) If at any time when a restriction of liberty order is in force it appears
- <sup>F132</sup>(a) [ <sup>F133</sup>except in a case to which paragraph (b) below applies,] to the court which made the order[<sup>F134</sup> or]
  - <sup>F135</sup>(b) [ where a copy of the order was, under section 245A(5)(a)(ii) or 245E(7)(a) of this Act, sent to the clerk of a different court, to that different court (or, if there has been more than one such sending, the different court to which such a copy has most recently been so sent),]
- that the offender has failed to comply with any of the requirements of the order the court [<sup>F136</sup>in question] may issue a citation requiring the offender to appear before [<sup>F137</sup>it] at such time as may be specified in the citation or, if it appears to [<sup>F138</sup>that court] to be appropriate, it may issue a warrant for the arrest of the offender.



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- (2) If it is proved to the satisfaction of <sup>[F139]</sup>that court] that the offender has failed without reasonable excuse to comply with any of the requirements of the order <sup>[F140]</sup>it] may by order—
- (a) without prejudice to the continuance in force of the order, impose a fine not exceeding level 3 on the standard scale;
  - (b) vary the restriction of liberty order; or
  - (c) revoke that order.
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a restriction of liberty order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) Where <sup>[F141]</sup>a court] varies a restriction of liberty order under subsection (2) above it may do so in any of the ways mentioned in paragraph (a) of section 245E(2) of this Act.]

#### Textual Amendments

- F131** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1
- F132** Words in s. 245F(1) renumbered (27.6.2003) as s. 245F(1)(a) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(1)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F133** Words in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F134** Word in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F135** S. 245F(1)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F136** Words in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(iii), 89; S.S.I. 2003/288, art. 2, Sch.
- F137** Words in s. 245F(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(iv), 89; S.S.I. 2003/288, art. 2, Sch.
- F138** Words in s. 245F(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(v), 89; S.S.I. 2003/288, art. 2, Sch.
- F139** Words in s. 245F(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(b)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F140** Words in s. 245F(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(b)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F141** Words in s. 245F(4) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(c), 89; S.S.I. 2003/288, art. 2, Sch.

#### <sup>[F142]</sup>245D Disposal on revocation of restriction of liberty order.

- (1) Where the court revokes a restriction of liberty order under section 245E(2)(b) or 245F(2) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made, but in so doing the court shall have regard to the time for which the order has been in operation.
- (2) Where the court revokes a restriction of liberty order as mentioned in subsection (1) above, and the offender is, <sup>[F143]</sup>by virtue of section 245D(3) of this Act, subject to a

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probation order or a drug treatment and testing order or to both such orders, it shall, before disposing the offender under subsection (1) above—

- (a) where he is subject to a probation order, discharge that order;
- (b) where he is subject to a drug treatment and testing order, revoke that order; and
- (c) where he is subject to both such orders, discharge the probation order and revoke the drug treatment and testing order.]]

[<sup>F144</sup>(3) Where the court orders a probation order discharged or a drug treatment and testing order revoked the clerk of the court shall forthwith give copies of that order to the persons mentioned in subsection (4) or, as the case may be, (5) of section 245D of this Act.

(4) Where the court orders a probation order discharged and a drug treatment and testing order revoked, the clerk of the court shall forthwith give copies of that order to the persons mentioned in section 245D(6) of this Act.]

#### Textual Amendments

**F142** Ss. 245A-245I inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

**F143** S. 245G(2): words and sub-paras. (a)-(c) substituted (30.9.1998) for words in s. 245G(2) by 1998 c. 37, s. 94(2), Sch. 6 Pt. I para. 4(2); S.I. 1998/2327, art. 2(1)(s)

**F144** S. 245G(3)(4) added (30.9.1998) by 1998 c. 37, s. 94(2), Sch. 6 Pt. I para. 4(3); S.I. 1998/2327, art. 2(1)(s)

#### [<sup>F145</sup>245H] Documentary evidence in proceedings under section 245F.

(1) Evidence of the presence or absence of the offender at a particular place at a particular time may, subject to the provisions of this section, be given by the production of a document or documents bearing to be—

- (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored; and
- (b) a certificate signed by a person nominated for the purpose of this paragraph by the Secretary of State that the statement relates to the whereabouts of the person subject to the order at the dates and times shown in the statement.

(2) The statement and certificate mentioned in subsection (1) above shall, when produced at a hearing, be sufficient evidence of the facts set out in them.

(3) Neither the statement nor the certificate mentioned in subsection (1) above shall be admissible in evidence unless a copy of both has been served on the offender prior to the hearing and, without prejudice to the foregoing, where it appears to the court that the offender has had insufficient notice of the statement or certificate, it may adjourn a hearing or make any order which it thinks appropriate in the circumstances.]

#### Textual Amendments

**F145** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

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#### Modifications etc. (not altering text)

**C24** S. 245H applied (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 194, 336, [Sch. 13 para. 14\(5\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1

#### [<sup>F146</sup>**245I** Procedure on variation or revocation of restriction of liberty order.

Where a court exercises any power conferred by sections 232(3A), 245E(2) or 245F(2) (b) or (c) of this Act, the clerk of the court shall forthwith give copies of the order varying or revoking the restriction of liberty order to any person responsible for monitoring the offender's compliance with that order and that person shall give a copy of the order to the offender.]

#### Textual Amendments

**F146** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by [1997 c. 48, s. 5](#); S.I. 1997/2323, arts. 3, 5(1), [Sch. 1](#)

#### [<sup>F147</sup>**245JB** Breach of certain orders: adjourning hearing and remanding in custody etc.

- (1) Where a probationer or offender appears before the court in respect of his apparent failure to comply with a requirement of, as the case may be, a probation order, drug treatment and testing order, supervised attendance order, community service order or restriction of liberty order the court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with him, adjourn the hearing.
- (2) Where, under subsection (1) above, the court adjourns a hearing it shall remand the probationer or offender in custody or on bail or ordain him to appear at the adjourned hearing.
- (3) A court shall not so adjourn a hearing for any single period exceeding four weeks or, on cause shown, eight weeks.
- (4) A probationer or offender remanded under this section may appeal against the refusal of bail, or against the conditions imposed, within 24 hours of his remand.
- (5) Any such appeal shall be by note of appeal presented to the High Court, who, either in court or in chambers, may after hearing the prosecutor and the appellant—
  - (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the appellant to appear at the adjourned hearing; or
  - (b) confirm the order.]

#### Textual Amendments

**F147** S. 245J inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 48, 89; S.S.I. 2003/288, [art. 2](#), Sch.

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VALID FROM 28/10/2004

## <sup>F148</sup>Community reparation orders

### Textual Amendments

**F148** Ss. 245K-245Q and preceding cross-heading inserted (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 120, 145(2); S.S.I. 2004/420, art. 3, Sch. 1

### 245K Community reparation orders

- (1) Where subsection (2) below applies, the court may, instead of imposing any sentence which, but for this subsection, it could impose, make a community reparation order in respect of a person (“the offender”).
- (2) This subsection applies where—
  - (a) the offender is convicted in summary proceedings of an offence;
  - (b) at the time when he committed the offence, he was at least 12 years old;
  - (c) he committed the offence by engaging to any extent in antisocial behaviour; and
  - (d) in relation to the local authority that would be specified in the order, the Scottish Ministers have notified the court that the authority has made arrangements that would enable an order to be complied with.
- (3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—
  - (a) acts in a manner that causes or is likely to cause alarm or distress; or
  - (b) pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as him.
- (4) A community reparation order is an order—
  - (a) requiring the specified local authority to appoint a supervising officer for the purposes of—
    - (i) determining which prescribed activities the offender should undertake for the specified number of hours (being at least 10 and not exceeding 100) during the period of 12 months beginning with the day on which the order is made;
    - (ii) determining at what times and in which localities he should undertake those activities; and
    - (iii) giving the offender directions during that period to undertake activities in accordance with determinations under sub-paragraphs (i) and (ii) above; and
  - (b) requiring the offender, during that period, to comply with those directions.
- (5) In subsection (4) above—

“prescribed activities” means activities designed—

  - (a) to enable reparation to be made (whether to a particular person or to a group of persons and whether such a person, or any person in the

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group, has been affected by the antisocial behaviour or otherwise) by persons who have engaged in antisocial behaviour; or

(b) to reduce the likelihood of persons engaging in such behaviour,

which are of such description as the Scottish Ministers may by regulations prescribe; and

“specified” means specified in the order.

(6) The Scottish Ministers may by regulations make provision about determinations made, and directions given, by virtue of paragraph (a) of subsection (4) above.

(7) In giving directions by virtue of subsection (4)(a)(iii) above, a supervising officer shall, as far as practicable, avoid—

(a) any conflict with the offender’s religious beliefs;

(b) any interference with the times at which the offender normally works (or carries out voluntary work) or attends an educational establishment.

(8) Before making a community reparation order in respect of an offender, the court shall explain to him in ordinary language—

(a) the purpose and effect of the order;

(b) the consequences of failure to comply with the order; and

(c) the powers the court has under section 245P of this Act.

(9) For the purposes of any appeal or review, a community reparation order is a sentence.

(10) Regulations under subsections (5) and (6) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **245L Community reparation order: notification**

Where the court makes a community reparation order it shall intimate the making of the order to—

(a) the offender;

(b) the chief social work officer of the local authority specified in the order; and

(c) where it is not the appropriate court, the clerk of the appropriate court.

#### **245M Failure to comply with community reparation order: extension of 12 month period**

Subject to sections 245N(4) and 245P(2)(c) and (d) of this Act, if—

(a) a community reparation order is made in respect of an offender; and

(b) the offender fails to comply with a direction given by the supervising officer appointed by virtue of the order,

then the order shall, notwithstanding section 245K(4)(a)(i), remain in force until the offender has complied with the direction.

#### **245N Failure to comply with community reparation order: powers of court**

(1) Subsection (2) below applies where—

(a) a community reparation order is made in respect of an offender; and

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- (b) on information from the offender’s supervising officer, it appears to the appropriate court that the offender has failed to comply with the order or any direction given under it.
- (2) The court may issue—
  - (a) a warrant for the arrest of the offender; or
  - (b) a citation requiring the offender to appear before the court at such time as may be specified in the citation.
- (3) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.
- (4) If it is proved to the satisfaction of the court before which the offender is brought or appears in pursuance of subsection (2) above that the offender has failed without reasonable excuse to comply with the order or any direction given under it, the court may revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.
- (5) The evidence of one witness shall, for the purposes of subsection (4) above, be sufficient evidence.

**245P Extension, variation and revocation of order**

- (1) Subsection (2) below applies where a community reparation order is made in respect of an offender.
- (2) On the application of the offender or the offender’s supervising officer, the appropriate court may, if it appears to it that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made—
  - (a) extend, in relation to the order, the period of 12 months specified in section 245K(4)(a)(i) of this Act;
  - (b) vary the numbers of hours specified in the order;
  - (c) revoke the order; or
  - (d) revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.
- (3) If the court proposes to exercise its powers under subsection (2)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring the offender to appear before the court at such time as may be specified in the citation and, if he fails to appear, may issue a warrant for his arrest.
- (4) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.

**245Q Sections 245L, 245N and 245P: meaning of “appropriate court”**

In sections 245L, 245N and 245P of this Act, “appropriate court”, in relation to a community reparation order, means the court having jurisdiction in the area of the local authority specified in the order, being a sheriff or district court according to whether the order is made by a sheriff or district court (except that, in the case where an order is made by a district court and there is no district court in that area, it means the sheriff).]



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### *Admonition and absolute discharge*

#### **246 Admonition and absolute discharge.**

- (1) <sup>F149</sup>Subject to sections 205A and 205B of this Act, a court may, if it appears to meet the justice of the case, dismiss with an admonition any person convicted by the court of any offence.
- (2) Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), if it appears to the court, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate it may instead of sentencing him make an order discharging him absolutely.
- (3) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may without proceeding to conviction make an order discharging him absolutely.

#### **Textual Amendments**

**F149** Words in s. 246(1) inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(31)**; S.I. 1997/2323, art. 3, **Sch. 1**

#### **Modifications etc. (not altering text)**

**C25** S. 246(1)(2) restricted (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 9**

#### **247 Effect of probation and absolute discharge.**

- (1) Subject to the following provisions of this section, a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence.
- (2) Without prejudice to subsection (1) above, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) Subsections (1) and (2) above shall not affect any right to appeal.
- (4) Where a person charged with an offence has at any time previously been discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to lay before the court the order of absolute discharge in like manner as if the order were a conviction.
- (5) Where an offender is discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.



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- (6) Where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as mentioned in subsection (1) above, is subsequently sentenced under this Act for that offence, the provisions of that subsection shall cease to apply to the conviction.

#### Modifications etc. (not altering text)

- C26** S. 247(1) excluded (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\), ss. 134\(1\)\(c\)](#), 141 (with s. 134(2)(3)); [S.S.I. 2004/138, art. 2](#)
- C27** S. 247(1)(2) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\), ss. 158\(3\)\(c\)](#), 182 (with s. 180); [S.I. 2010/816, art. 2, Sch. para. 11](#)
- C28** S. 247(1) excluded (prosp.) by [2005 asp 16, s. 96\(2A\)](#) (as added by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 24\(4\)](#), 206(1))
- C29** S. 247(1)(2) excluded (prosp.) by [2005 asp 16, s. 129\(5\)](#) (as added by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 24\(5\)](#), 206(1))
- C30** S. 247(1)(2) excluded (prosp.) by [2005 asp 16, s. 129\(5\)](#) (as added by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 24\(5\)](#), 206(1))
- C31** S. 247(1)(2) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\), ss. 158\(3\)\(c\)](#), 182 (with s. 180); [S.I. 2010/816, art. 2, Sch. para. 11](#)

### Disqualification

#### 248 Disqualification where vehicle used to commit offence.

- (1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purposes of committing or facilitating the commission of that offence, the court may order him to be disqualified for such a period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the <sup>M37</sup>Road Traffic Act 1988.

[<sup>F150</sup>(2) A court which makes an order under subsection (1) above disqualifying a person from holding or obtaining a licence under Part III of the Road Traffic Act 1988 shall require him to produce—

- (a) any such licence;
- (b) any Community licence (within the meaning of that Part); and
- (c) any counterpart of a licence mentioned in paragraph (a) or (b) above, held by him.]

- (3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

- (4) In relation to licences [<sup>F151</sup>, other than Community licences] which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.

#### Textual Amendments

**F150** S. 248(2) substituted (1.1.1997) by [S.I. 1996/1974, reg. 5, Sch. 4 para. 6\(2\)](#)

**F151** Words in s. 248(4) inserted (1.1.1997) by [1996/1974, reg. 5, Sch. 4 para. 6\(3\)](#)

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#### Marginal Citations

M37 1988 c.52.

### [<sup>F152</sup>248A] **General power to disqualify offenders.**

- (1) Subject to subsection (2) below, the court by or before which a person is convicted of an offence may, in addition to or instead of dealing with him in any other way, order him to be disqualified from holding or obtaining a licence to drive a motor vehicle granted under Part III of the <sup>M38</sup>Road Traffic Act 1988 for such period as it thinks fit.
- (2) Where the person is convicted of an offence for which the sentence is fixed by law, subsection (1) above shall have effect as if the words “or instead of” were omitted.
- (3) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

F152 Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, s. 15(1); S.I. 1997/2323, arts. 3, 4, Schs. 1, 2

#### Marginal Citations

M38 1988 c.52.

### [<sup>F153</sup>248B] **Power to disqualify fine defaulters.**

- (1) This section applies where the court has power to impose a period of imprisonment in default of payment of a fine, or any part or instalment of a fine.
- (2) Where this section applies, the court may, instead of imposing such a period of imprisonment as is mentioned in subsection (1) above, order that where the offender is in default he shall be disqualified from holding a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988 for such period not exceeding twelve months as the court thinks fit.
- (3) Where an order has been made under subsection (2) above in default of payment of any fine, or any part or instalment of a fine—
  - (a) on payment of the fine to any person authorised to receive it, the order shall cease to have effect; and
  - (b) on payment of any part of that fine to any such person, the period of disqualification to which the order relates shall be reduced (or, as the case may be, further reduced) by a number of days bearing as nearly as possible the same proportion to such period as the sum so paid bears to the amount of the fine outstanding at the commencement of that period.
- (4) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) Section 19 of the <sup>M39</sup>Road Traffic Offenders Act 1988 (proof of disqualification in Scottish proceedings) shall apply to an order under subsection (2) above as it applies to a conviction or extract conviction.

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- (6) The Secretary of State may by order made by statutory instrument vary the period specified in subsection (2) above; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F153** Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, s. 15(1); S.I. 1997/2323, arts. 3, 4, Schs. 1, 2

#### Marginal Citations

**M39** 1988 c.53.

### [<sup>F154</sup>248C] Application of sections 248A and 248B.

- (1) The Secretary of State may by order prescribe which courts, or class or classes of courts, may make orders under section 248A or 248B of this Act and, without prejudice to that generality, in relation to district courts an order under this subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.
- (2) An order made under subsection (1) above shall be made by statutory instrument and any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where an order has been made under subsection (1) above, section 248(1) of this Act shall not apply as respects any court, or class or classes of court prescribed by the order.]

#### Textual Amendments

**F154** Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, s. 15(1); S.I. 1997/2323, arts. 3, 4, Schs. 1, 2

## Compensation

### 249 Compensation order against convicted person.

- (1) Subject to subsections (2) and (4) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Part of this Act referred to as “a compensation order”) requiring him to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence.
- (2) It shall not be competent for a court to make a compensation order—
- where, under section 246(2) of this Act, it makes an order discharging him absolutely;
  - where, under section 228 of this Act, it makes a probation order; or
  - at the same time as, under section 202 of this Act, it defers sentence.

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- (3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the <sup>M40</sup>Road Traffic Act 1988 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner's possession, that damage, however and by whomsoever it was in fact caused, shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.
- (4) No compensation order shall be made in respect of—
  - (a) loss suffered in consequence of the death of any person; or
  - (b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (3) above, as having been caused by the convicted person's acts.
- (5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such order, the court shall take into consideration his means so far as known to the court.
- (6) For the purposes of subsection (5) above, in assessing the means of a person who is serving, or is to serve, a period of imprisonment or detention, no account shall be taken of earnings contingent upon his obtaining employment after release.
- (7) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.
- (8) In summary proceedings—
  - (a) a sheriff, or a stipendiary magistrate appointed under section 5 of the <sup>M41</sup>District Courts (Scotland) Act 1975, shall have power to make a compensation order awarding in respect of each offence an amount not exceeding the prescribed sum;
  - (b) a judge of a district court (other than such stipendiary magistrate) shall have power to make a compensation order awarding in respect of each offence an amount not exceeding level 4 on the standard scale.
- (9) Payment of any amount under a compensation order shall be made to the clerk of the court who shall account for the amount to the person entitled thereto.
- (10) Only the court shall have power to enforce a compensation order.

#### Marginal Citations

**M40** 1988 c.52.

**M41** 1975 c.20.

## 250 Compensation orders: supplementary provisions.

- (1) Where a court considers that in respect of an offence it would be appropriate to impose a fine and to make a compensation order but the convicted person has insufficient means to pay both an appropriate fine and an appropriate amount in compensation the court should prefer a compensation order.
- (2) Where a convicted person has both been fined and had a compensation order made against him in respect of the same offence or different offences in the same

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proceedings, a payment by the convicted person shall first be applied in satisfaction of the compensation order.

- (3) For the purposes of any appeal or review, a compensation order is a sentence.
- (4) Where a compensation order has been made against a person, a payment made to the court in respect of the order shall be retained until the determination of any appeal in relation to the order.

## **251 Review of compensation order.**

- (1) Without prejudice to the power contained in section 213 of this Act, (as applied by section 252 of this Act), at any time before a compensation order has been complied with or fully complied with, the court, on the application of the person against whom the compensation order was made, may discharge the compensation order or reduce the amount that remains to be paid if it appears to the court that—
  - (a) the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the compensation order; or
  - (b) that property the loss of which is reflected in the compensation order has been recovered.
- (2) In subsection (1) above “the court” means—
  - (a) in a case where, as respects the compensation order, a transfer of fine order under section 222 of this Act (as applied by the said section 252) is effective and the court by which the compensation order is enforceable is in terms of the transfer of fine order a court of summary jurisdiction in Scotland, that court; or
  - (b) in any other case, the court which made the compensation order or, where that court was the High Court, by which the order was first enforceable.

## **252 Enforcement of compensation orders: application of provisions relating to fines.**

- (1) The provisions of this Act specified in subsection (2) below shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to compensation orders as they apply in relation to fines; and section 91 of the <sup>M42</sup>Magistrates’ Courts Act 1980 and article 96 of the <sup>M43</sup>Magistrates’ Courts (Northern Ireland) Order 1981 shall be construed accordingly.
- (2) The provisions mentioned in subsection (1) above are—
  - section 211(3), (4) and (7) to (9) (enforcement of fines);
  - section 212 (fines in summary proceedings);
  - section 213 (power to remit fines), with the omission of the words “or (4)” in subsection (2) of that section;
  - section 214 (time for payment) with the omission of—
    - (a) the words from “unless” to “its decision” in subsection (4); and
    - (b) subsection (5);
  - section 215 (further time for payment);
  - section 216 (reasons for default);
  - section 217 (supervision pending payment of fine);
  - section 218 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings;

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subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8) (maximum period of imprisonment for non-payment of fine);  
 section 220 (payment of fine in part by prisoner);  
 section 221 (recovery by civil diligence);  
 section 222 (transfer of fine orders);  
 section 223 (action of clerk of court on transfer of fine order); [<sup>F155</sup>and]  
 section 224 (discharge from imprisonment to be specified) [<sup>F156</sup>; and.  
 section 248B (driving disqualification for fine defaulters) so far as it relates to the power conferred by section 219(1)(b).]

- (3) In the application of the provisions of section 219 of this Act mentioned in subsection (2) above for the purposes of subsection (1) above—
- (a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a compensation order but not vice versa; and
  - (b) where a court imposes imprisonment both in respect of a fine and of a compensation order the amounts in respect of which imprisonment is imposed shall, for the purposes of subsection (2) of the said section 219, be aggregated.

#### Extent Information

**E3** S. 252 extends to UK for certain construction purposes, see. s. 252(1).

#### Textual Amendments

**F155** S. 252(2): by 1997 c. 48, ss. 15(2)(a), 62(2), **Sch. 3**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7) it is provided (1.1.1998) that the word “and” in the third place where it occurs is repealed

**F156** Entry in s. 252(2) and preceding word “; and” inserted (1.1.1998) by 1997 c. 48, s. 15(2)(b); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

#### Marginal Citations

**M42** 1980 c.43.

**M43** 1981/1675 (N.I. 26.)

## 253 Effect of compensation order on subsequent award of damages in civil proceedings.

- (1) This section shall have effect where a compensation order or a service compensation order or award has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect thereof subsequently falls to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the order or award; but where the whole or part of the amount awarded by the order or award has been paid, the damages awarded in the civil proceedings shall be restricted to the amount (if any) by which, as so assessed, they exceed the amount paid under the order or award.
- (3) Where the whole or part of the amount awarded by the order or award remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order or award was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—

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- (a) if it is for an amount not exceeding the amount unpaid under the order or award, shall not be enforced; or
  - (b) if it is for an amount exceeding the amount unpaid under the order or award, shall not be enforced except to the extent that it exceeds the amount unpaid, without the leave of the court.
- (4) In this section a “service compensation order or award” means—
- (a) an order requiring the payment of compensation under paragraph 11 of—
    - (i) Schedule 5A to the <sup>M44</sup>Army Act 1955;
    - (ii) Schedule 5A to the <sup>M45</sup>Air Force Act 1955; or
    - (iii) Schedule 4A to the <sup>M46</sup>Naval Discipline Act 1957; or
  - (b) an award of stoppages payable by way of compensation under any of those Acts.

#### Marginal Citations

**M44** 1955 c.18.

**M45** 1955 c.19.

**M46** 1957 c.53.

### *Forfeiture*

#### **254 Search warrant for forfeited articles.**

Where a court has made an order for the forfeiture of an article, the court or any justice may, if satisfied on information on oath—

- (a) that there is reasonable cause to believe that the article is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.



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